

DISPARITY STUDY FINAL REPORT



BALTIMORE COUNTY

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CHAPTER 1: Legal Review

I. Introduction

The standard for measuring evidence of disparity in public contracting is set forth in the 1989 United States Supreme Court decision of *City of Richmond v. J.A. Croson Co.*¹ (“*Croson*”). This chapter summarizes the legal standard decided in *Croson* and its progeny as applied to contracting programs for minority, woman, local, and small-owned business enterprises. The Disparity Study applies this legal standard to the examination of the utilization of available minority and women-owned business enterprises (MWBs) on Baltimore County’s (County) contracts awarded during the July 1, 2012 through June 30, 2018 study period.

This chapter is organized into eight sections. This first section is the Introduction. *Section II: Overview of the Fourth Circuit Court Decisions* summarizes the legal framework that local governments in the Fourth Circuit must adhere to satisfy the *Croson* standard. *Section III: Standard of Review* provides an overview of the constitutional parameters applicable to race and gender-conscious programs and race and gender-neutral programs. A factual predicate is set forth in *Section IV: Burden of Proof*, which describes the documented evidence of past discrimination that must be demonstrated by the Baltimore County before the implementation of race and gender remedial measures. The *Croson Evidentiary Framework* is discussed in *Section V*. The framework must include a strong basis in evidence of past discrimination and “narrowly tailored” race-conscious remedies.² A *Consideration of Race-Neutral Options*, described in *Section VI*, references remedial initiatives to be considered in addition to race and gender-conscious remedies. The *Conclusion* and *List of Authorities* are contained in *Section VII* and *Section VIII*, respectively.

II. Overview of Court Decisions in the Fourth Judicial Circuit

Court decisions adjudicated within the legal jurisdiction of the Fourth Circuit Court of Appeals constitute binding judicial authority governing the County’s equity and inclusion contracting program. While *Croson* defined the factual predicate needed to demonstrate a compelling interest in remedying the effects of past or present racial discrimination, the Fourth Circuit Court of Appeals and several federal judicial circuits have interpreted the decision when challenges to a minority business contracting program were decided. The post *Croson* cases decided in the fourth judicial circuit that have interpreted the *Croson* decision are binding judicial authority for the County and all jurisdictions in the circuit.

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495-96 (1989).

² *Croson*, 488 U.S. at 486.

Table 1.1 presents salient decisions in the fourth judicial circuit that have reviewed the application of race in public contracting following the *Croson* decision. The holdings in these cases are discussed in detail within this chapter.

Table 1.1: Key Decisions in the Fourth Judicial Circuit

Fourth Circuit	
Maryland, District of Columbia, Federal Circuit, West Virginia, Virginia, North Carolina, South Carolina	
Case Name	Holding
<i>Concrete General Inc v. Washington Suburban Sanitary Commission</i> , 739 F.Supp 370 (1991)	In <i>Concrete General Inc.</i> , the court held that the Commission's MBE program was unconstitutional since the factual predicate did not include evidence of past discrimination to support the program. The program was deemed too broad because it benefitted MBEs from geographical areas that did not experience discrimination.
<i>Maryland Minority Contractors Ass'n v. Maryland Stadium Authority</i> , 70 F.Supp.2d 580 (D. Md. 1998).	In <i>Maryland Minority Contractors Association</i> , the court held that the Maryland Minority Business Enterprise Affirmative Action statute passed constitutional muster thus the Authority's application of the MWBE requirements did not violate equal protection rights of non-minority contractors.
<i>Associated Util. Contr. of Md., Inc. v. Mayor of Baltimore</i> , 83 F.Supp.2d 613 (D. Md. 2000).	In <i>Associated Utility Contractors of Maryland</i> , the court held that the City's annual set-aside construction subcontract goals of 20 percent for MBE and 3 percent for WBEs violated equal protection rights of non-MWBE businesses. The court found that the City had no reliable record of the availability of MWBEs and failed to determine whether the 20 percent and 3 percent goals were rationally related to discrimination in the award of construction contracts.
<i>H.B. Rowe Co. v. Tippet</i> , 615 F.3d 255 (4th Cir. 2010).	In <i>H.B. Rowe</i> , the court held that the state's statute was narrowly tailored to achieve North Carolina's compelling interest in remedying discrimination against African American and Native American subcontractors. The court found the evidence revealed a gross statistical disparity between the availability of qualified African American and Native American subcontractors and the dollars awarded to each group. The court upheld the minority participation goals for these groups. Additionally, the court found that the anecdotal evidence of discrimination against the two groups sufficiently supplemented the findings. The court enjoined the state from including women, Asian American, and Hispanic American subcontractors in the goals program because there was no factual predicate for these groups.

III. Standard of Review

Croson examined the City of Richmond's Minority Business Enterprise (MBE) Program and decided that programs employing racial classifications would be subject to "strict scrutiny," the highest legal standard. Broad notions of equity or general allegations of historical and societal discrimination against minorities fail to meet the requirements of strict scrutiny.



Where there are identified statistical findings of discrimination sufficient to warrant remediation, the remedy must also impose a minimal burden upon unprotected classes. In this section, the standard of review refers to the level of scrutiny a court applies during its analysis of whether or not a particular law is constitutional.

1. Minority Business Enterprise Programs

In *Croson*, the United States Supreme Court affirmed that, pursuant to the Fourteenth Amendment, the proper standard of review for state and local race-based MBE programs is strict scrutiny.³ Specifically, the government must show that the race-conscious remedies are narrowly tailored to achieve a compelling state interest.⁴ The Court recognized that a state or local entity may take action, in the form of an MBE program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁵ Justice O'Connor, speaking for the majority, articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs that are “narrowly tailored” to address systemic racial discrimination.⁶

2. Women Business Enterprise Programs

Since *Croson*, which dealt exclusively with the review of race-conscious plans, the United States Supreme Court has remained silent with respect to the appropriate standard of review for geographically based Women Business Enterprise (WBE) programs and Local Business Enterprise (LBE) programs. In other contexts, however, the United States Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications have been subject only to an “intermediate” standard of review, regardless of which gender is favored.

Notwithstanding the fact that the United States Supreme Court has not ruled on a WBE program, the consensus among the federal circuit courts of appeals is that WBE programs are subject to intermediate scrutiny, rather than the more exacting strict scrutiny standard to which race-conscious programs are subject.⁷ Intermediate scrutiny requires the governmental entity to demonstrate that the action taken furthers an “important governmental objective,” employing a method that bears a fair and substantial relation to the goal.⁸ The courts have also described the

³ *Croson*, 488 U.S. at 493-95.

⁴ *Id.* at 493.

⁵ *Id.* at 509.

⁶ *Id.* at 501-2. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting: compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides fairly detailed guidance on how those concepts are to be treated in contracting. In education and employment, the concepts are not explicated to nearly the same extent. Therefore, references in those cases to “compelling governmental interest” and “narrow tailoring” for purposes of contracting are essentially generic and of little value in determining the appropriate methodology for disparity studies.

⁷ See *Coral Constr. Co. v. King Cnty.*, 941 F.2d 910, 930 (9th Cir. 1991); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“*Philadelphia VT*”), 91 F.3d 586, 596-98 (3d Cir. 1996); *Eng’g Constr. Ass’n v. Metro. Dade Cnty.* (“*Dade County II*”), 122 F.3d 895, 907-08 (11th Cir. 1997); see also *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 960 (10th Cir. 2003) (“*Concrete Works IV*”); and *H.B. Rowe Co. v. N.C. Dep’t of Transp.*, 615 F.3d 233, 236 (4th Cir. 2010) (“*Rowe*”).

⁸ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982); see also *United States v. Virginia*, 518 U.S. 515, 524 (1996) (“*Virginia*”).



test as requiring an “exceedingly persuasive justification” for classifications based on gender.⁹ The United States Supreme Court acknowledged that in “limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists the members of that sex who are disproportionately burdened.”¹⁰

Consistent with the United States Supreme Court’s finding with regard to gender classification, the Third Circuit in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia* (“*Philadelphia IV*”) ruled in 1993 that the standard of review governing WBE programs is different from the standard imposed upon MBE programs.¹¹ The Third Circuit held that, whereas MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.”¹² In contrast, an MBE program would survive constitutional scrutiny only by demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.¹³

The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco* (“*AGCC I*”) held that classifications based on gender require an “exceedingly persuasive justification.”¹⁴ The justification is valid only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification, and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.¹⁵

The Eleventh Circuit United States Court of Appeals (Eleventh Circuit) also applied intermediate scrutiny.¹⁶ In its review and affirmation of the district court’s holding, in *Engineering Contractors Association of South Florida v. Metropolitan Dade County* (“*Dade County II*”), the Eleventh Circuit cited the Third Circuit’s 1993 formulation in *Philadelphia IV*: “[T]his standard requires the [County] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”¹⁷ Although the *Dade County II* appellate court ultimately applied the intermediate scrutiny standard, it queried whether the United States Supreme Court decision in *United States v. Virginia*,¹⁸ finding the all-male program at

⁹ *Hogan*, 458 U.S. at 751; see also *Mich. Rd. Builders Ass’n, Inc. v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987).

¹⁰ *Hogan*, 458 U.S. at 728; see also *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975) (“*Ballard*”).

¹¹ *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“*Philadelphia IV*”), 6 F. 3d 990, 1001 (3d Cir. 1993).

¹² *Philadelphia IV*, 6 F.3d at 1009-10.

¹³ *Id.* at 1002.

¹⁴ *Associated Gen. Contractors of Cal. v. City & Cnty. of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987) (“*AGCC I*”).

¹⁵ *Ballard*, 419 U.S. at 508.

¹⁶ *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F. 3d 1548, 1579-80 (11th Cir. 1994).

¹⁷ *Dade County II*, 122 F.3d at 909 (citing *Philadelphia IV*, 6 F.3d at 1010; see also *Saunders v. White*, 191 F. Supp. 2d 95, 134 (D.D.C. 2002) (stating “[g]iven the gender classifications explained above, the initial evaluation procedure must satisfy intermediate scrutiny to be constitutional.”).

¹⁸ *Virginia*, 518 U.S. at 534.



Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny.¹⁹ In the case of *United States v. Virginia*, the U.S. Supreme Court held that parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.²⁰ While the Eleventh Circuit United States Court of Appeals echoed that speculation, it concluded that “[u]nless and until the U.S. Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender preference may be upheld so long as it is substantially related to an important governmental objective.”²¹

In *Dade County II*, the Eleventh Circuit court noted that the Third Circuit in *Philadelphia IV* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to WBE programs.²² *Dade County II* interpreted that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’”²³

It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test, a local government must demonstrate some past discrimination against women, but not necessarily discrimination by the government itself;²⁴ and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”²⁵ but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”²⁶

This determination requires “evidence of past discrimination in the economic sphere at which the affirmative action program is directed.”²⁷ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”²⁸

¹⁹ *Dade County II*, 122 F.3d at 907-08.

²⁰ *Virginia*, 518 U.S. at 534.

²¹ *Dade County II*, 122 F.3d at 908.

²² *Id.* at 909.

²³ *Id.* at 910.

²⁴ *Id.* (quoting *Ensley Branch*, 31 F.3d at 1580).

²⁵ *Id.* (quoting *Hayes v. N. State Law Enforcement Officers Ass’n.*, 10 F.3d 207, 217 (4th Cir. 1993) (racial discrimination case)).

²⁶ *Id.* (quoting *Philadelphia IV*, 6 F.3d at 1010).

²⁷ *Id.* (quoting *Ensley Branch*, 31 F.3d at 1581).

²⁸ *Id.* at 929; cf. *Builders Ass’n of Greater Chi. v. Cnty. of Cook*, 256 F. 3d 642, 644 (7th Cir. 2001) (questioned why there should be a lesser standard where the discrimination was against women rather than minorities).



3. Local Business Enterprise Programs

In *AGCC I*, a pre-*Croson* case, the Ninth Circuit Court of Appeals applied the rational basis standard when evaluating the City and County of San Francisco's Local Business Enterprise (LBE) program, holding that a local government may give a preference to local businesses to address the economic disadvantages those businesses face in doing business within the City and County of San Francisco.²⁹

To survive a constitutional challenge under a rational basis review, the government entity need only demonstrate that the governmental action or program is rationally related to a legitimate government interest.³⁰ The Supreme Court cautioned government agencies seeking to meet the rational basis standard by advising that, if a race- and gender-neutral program is subjected to a constitutional attack, the facts upon which the program is predicated will be subject to judicial review.³¹ The rational basis standard of review does not have to be the government's actual interest. Rather, if the court can merely hypothesize a legitimate interest served by the challenged action, it will withstand the rational basis review.³² The term rational must convince an impartial lawmaker that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class.³³

San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses as compared to businesses located in other jurisdictions. The study showed a competitive disadvantage in public contracting for businesses located within the City as compared to businesses from other jurisdictions.

San Francisco-based businesses incurred higher administrative costs in doing business within the City. Such costs included higher taxes, rents, wages, insurance rates, and benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held “. . . the city may rationally allocate its own funds to ameliorate disadvantages suffered by local businesses, particularly where the city itself creates some of the disadvantages.”³⁴

²⁹ *AGCC I*, 813 F.2d at 943; *Lakeside Roofing Company v. State of Missouri*, et al., 2012 WL 709276 (E.D.Mo. Mar. 5, 2012) (Note that federal judges will generally rule the way that a previous court ruled on the same issue following the doctrine of *stare decisis* – the policy of courts to abide by or adhere to principles established by decisions in earlier cases; however, a decision reached by a different circuit is not legally binding on another circuit court, it is merely persuasive and instructional on the issue).

³⁰ *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) (quoting *Heller v. Doe*, 509 U.S. 312, 319–320 (1993)).

³¹ *Id.*

³² *Lakeside Roofing*, 2012 WL 709276; see KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW FOUNDATION PRESS Chapter (16th ed. 2007).

³³ *Croson*, 488 U.S. at 515.

³⁴ *AGCC I*, 813 F.2d at 943.



4. Small Business Enterprise Programs

A government entity may implement a Small Business Enterprise (SBE) program predicated upon a rational basis to ensure adequate small business participation in government contracting. Rational basis is the lowest level of scrutiny and the standard the courts apply to race- and gender-neutral public contracting programs.³⁵

IV. Burden of Proof

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, i.e., documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government's factual predicate on any of the following grounds:³⁶

- Disparity exists due to race-neutral reasons
- Methodology is flawed
- Data are statistically insignificant
- Controverting data exist

A. Initial Burden of Proof

Croson requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of past identified discrimination.³⁷ Whether the government has produced a strong basis in evidence is a question of law.³⁸ The defendant in a constitutional claim against a disparity study has the initial burden of proof to show that there was past discrimination.³⁹ Once the defendant meets this initial burden, the burden shifts to the plaintiff to prove that the program is unconstitutional. Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.⁴⁰

The adequacy of the government's evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”⁴¹ The onus is upon the jurisdiction to provide a

³⁵ *Doe I v. Lower Merion Sch. Dist.*, 689 F. Supp. 2d 742, 748 (E.D. Pa. 2010).

³⁶ *Contractors Ass'n v. City of Philadelphia*, 893 F. Supp. 419, 430, 431, 433, 437 (E.D. Pa.1995) (“*Philadelphia V*”) (These were the issues on which the district court in Philadelphia reviewed the disparity study before it).

³⁷ *Philadelphia VI*, 91 F.3d at 586 (citing *Concrete Works of Colo. v. Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994)(“*Concrete Works II*”)); see *Croson*, 488 U.S. at 510.

³⁸ *Id.* (citing *Associated Gen. Contractors v. New Haven*, 791 F. Supp. 941, 944 (D. Conn. 1992)).

³⁹ *Concrete Works II*, 36 F.3d at 1521-22 (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 292 (1986)).

⁴⁰ *Id.* at 1522.

⁴¹ *Id.* (citing *Croson*, 488 U.S. at 498).



factual predicate that is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program.⁴²

B. Ultimate Burden of Proof

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation—despite the government’s obligation to produce a strong factual predicate to support its program.⁴³ The plaintiff must persuade the court that the program is constitutionally flawed either by challenging the government’s factual predicate for the program or by demonstrating that the program is overly broad.

Joining the majority in stating that the ultimate burden rests with the plaintiff, Justice O’Connor explained the nature of the plaintiff’s burden of proof in her concurring opinion in *Wygant v. Jackson Board of Education* (“*Wygant*”):⁴⁴

[I]t is incumbent upon the nonminority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government’s] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently “narrowly tailored.”⁴⁵

In *Philadelphia VI*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether facts constitute a “strong basis” in evidence for race-based remedies.⁴⁶ That Court wrote that the allocation of the burden of persuasion is dependent upon the plaintiff’s argument against the constitutionality of the program. If the plaintiff’s theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.⁴⁷ If, on the other hand, the plaintiff argues there is no existence of past discrimination within the agency, the plaintiff must successfully rebut the agency’s evidentiary facts and prove their inaccuracy.⁴⁸

However, the ultimate issue of whether sufficient evidence exists to prove past discrimination is a question of law. The burden of persuasion in the traditional sense plays no role in the court’s resolution of that ultimate issue.⁴⁹

⁴² See *Croson*, 488 U.S. at 488.

⁴³ See *Wygant*, 476 U.S. at 277-78, 293.

⁴⁴ *Id.* (O’Connor, S., concurrence).

⁴⁵ *Wygant*, 476 U.S. at 277-78.

⁴⁶ *Philadelphia VI*, 91 F.3d at 597.

⁴⁷ *Id.* at 597.

⁴⁸ *Id.* at 597-598.

⁴⁹ At first glance, the Third Circuit and the Eleventh Circuit positions appear to be inconsistent as to whether the issue at hand is a legal issue or a factual issue. However, the two courts were examining the issues in different scenarios. For instance, the Third Circuit was examining whether



Concrete Works VI made clear that the plaintiff’s burden is an evidentiary one; it cannot be discharged simply by argument. The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147, 1173 (10th Cir. 2000): “[g]eneral criticism of disparity studies, as opposed to particular evidence undermining the reliability of the particular disparity study, is of little persuasive value.”⁵⁰ The requisite burden of proof needed to establish a factual predicate for race- and gender-conscious goals as set forth by *Croson* and its progeny is described below in *Section IV*.

The Tenth Circuit and the Eleventh Circuit present alternative approaches to the legal evidentiary requirements of the shifting burden of proof in racial classification cases. This split among the circuits pertains to the allocation of the burden of proof once the initial burden of persuading the court is met, that persisting vestiges of discrimination exist.⁵¹

The Tenth Circuit’s opinion in *Concrete Works VI* states that the burden of proof remains with the plaintiff to demonstrate that an ordinance is unconstitutional.⁵² On the other hand, the Eleventh Circuit in *Hershell* contends that the government, as the proponent of the classification, bears the burden of proving that its consideration of race- is narrowly tailored to serve a compelling state interest, and that the government must always maintain a “strong basis in evidence” for undertaking affirmative action programs.⁵³ Therefore, the proponent of the classification must meet a substantial burden of proof, a standard largely allocated to the government to prove that sufficient vestiges of discrimination exist to support the conclusion that remedial action is necessary. Within the Eleventh Circuit, judicial review of a challenged affirmative action program focuses primarily on whether the government entity can meet the burden of proof.

In practice, the standards prescribed in the Eleventh Circuit for proving the constitutionality of a proposed MWBE framework are rooted in *Engineering Contractors Ass’n v. Metropolitan Dade County*, the same Eleventh Circuit case that was cited to in the Tenth Circuit.⁵⁴ In *Dade County I*, the court found that a municipality can justify affirmative action by demonstrating “gross statistical disparities” between the proportion of minorities awarded contracts and the proportion of minorities willing and able to do the work, or by presenting anecdotal evidence – especially if buttressed by statistical data.⁵⁵

enough facts existed to determine if past discrimination existed, and the Eleventh Circuit was examining whether the remedy the agency utilized was the appropriate response to the determined past discrimination. Therefore, depending upon the Plaintiff’s arguments, a court reviewing an MBE program is likely to be presented with questions of law and fact.

⁵⁰ *Concrete Works VI*, 321 F.3d at 979.

⁵¹ *Hershell Gill Consulting Eng’rs, Inc. v. Miami-Dade Cnty.*, 333 F. Supp. 2d 1305, 1325 (S.D. Fla. 2004).

⁵² *Concrete Works VI*, 321 F.3d at 959 (quoting *Adarand v. Peña*, 228 F.3d 1147, 1176 (10th Cir. 2000) (“We reiterate that the ultimate burden of proof remains with the challenging party to demonstrate the unconstitutionality of an affirmative-action program.”)).

⁵³ *Hershell*, 333 F. Supp. 2d at 1305 (stating that *Concrete Works* is not persuasive because it conflicts with the allocation of the burden of proof stated by Eleventh Circuit precedent in *Johnson v. Board of Regents of the University of Georgia*, 263 F.3d 1234, 1244 (11th Cir. 2001)).

⁵⁴ 943 F. Supp. 1546 (S.D. Fla. 1996) (“*Dade County I*”).

⁵⁵ *Id.* at 907.



V. *Croson* Evidentiary Framework

Government entities must construct a strong evidentiary framework to stave off legal challenges and ensure that the adopted MBE program comports with the requirements of the Equal Protection Clause of the United States Constitution. The framework must comply with the stringent requirements of the strict scrutiny standard. Accordingly, there must be a strong basis in evidence that tends to show past discrimination, and the race-conscious remedy must be “narrowly tailored,” as set forth in *Croson*.⁵⁶ A summary of the appropriate types of evidence to satisfy the first element of the *Croson* standard follows.

A. *Active or Passive Participation*

Croson requires that the local entity seeking to adopt an MBE program must have perpetuated the discrimination to be remedied by the program.⁵⁷ However, the local entity need not have been an active perpetrator of such discrimination. Passive participation will satisfy this part of the Court’s strict scrutiny review.⁵⁸ An entity will be considered an “active” participant if the evidence shows that it created barriers that actively exclude MBEs from its contracting opportunities. An entity will be considered to be a “passive” participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.⁵⁹ The United States District Court for the District of Maryland affirmed that the City of Baltimore has a “compelling interest in eradicating and remedying private discrimination in the private subcontracting inherent in the letting of City construction contracts.”⁶⁰

Until *Concrete Works I*, the inquiry regarding passive discrimination was limited to the subcontracting practices of government prime contractors. The Tenth Circuit, in *Concrete Works I*, considered a purely private sector definition of passive discrimination, holding that evidence of a government entity infusing its tax dollars into a discriminatory system can satisfy passive discrimination.⁶¹

In *Concrete Works I*, the district court granted summary judgment in favor of the City of Denver in 1993.⁶² Concrete Works appealed to the Tenth Circuit, in *Concrete Works II*, in which the summary judgment in favor of the City of Denver was reversed and the case was remanded to the district court for trial.⁶³ The case was remanded with specific instructions permitting the parties

⁵⁶ *Croson*, 488 U.S. at 486.

⁵⁷ *Id.* at 488.

⁵⁸ *Id.* at 509.

⁵⁹ *Id.* at 492, accord *Coral Constr.*, 941 F.2d at 916.

⁶⁰ *Associated Util. Contr. of Md., Inc. v. Mayor of Baltimore*, 83 F.Supp.2d 613 (D. Md. 2000).

⁶¹ *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 823 F. Supp. 821, 824 (D. Colo. 1993)(“*Concrete Works I*”), rev’d, 36 F.3d 1513 (10th Cir. 1994), rev’d, 86 F. Supp. 2d 1042 (D. Colo. 2000), rev’d, 321 F.3d 950 (10th Cir. 2003).

⁶² *Concrete Works I*, 823 F. Supp. at 994.

⁶³ *Concrete Works II*, 36 F.3d at 1530-31.



“to develop a factual record to support their competing interpretations of the empirical data.”⁶⁴ On remand, the district court entered a judgment in favor of the plaintiff holding that the City’s ordinances violated the Fourteenth Amendment.⁶⁵

The district court in *Concrete III* rejected the four disparity studies the city offered to support the continuation of Denver’s MWBE program.⁶⁶ The court surmised that (1) the methodology employed in the statistical studies was not “designed to answer the relevant questions,”⁶⁷ (2) the collection of data was flawed, (3) important variables were not accounted for in the analyses, and (4) the conclusions were based on unreasonable assumptions.⁶⁸ The court deemed that the “most fundamental flaw” in the statistical evidence was the lack of “objective criteria [to] define who is entitled to the benefits of the program and [which groups should be] excluded from those benefits.”⁶⁹ The statistical analysis relied upon by the City to support its MWBE program was conducted as a result of the ensuing litigation. The statistical evidence proffered by the City to the court was not objective in that it lacked a correlation to the current MWBE program goals.

The Tenth Circuit on appeal rejected the district court’s analysis because the district court’s queries required Denver to prove the existence of discrimination. Moreover, the Tenth Circuit explicitly held that “passive” participation included private sector discrimination in the marketplace. The court found that marketplace discrimination is relevant where the agency’s prime contractors’ practices are discriminatory against their subcontractors:

The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination.” (citation omitted). The City can satisfy this condition by identifying the discrimination “*public or private*, with some specificity.” (internal quotes and citation omitted).⁷⁰

In *Concrete Works IV*, the Tenth Circuit held that the governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.”⁷¹ The Tenth Circuit further held that the city was correct in its attempt to show that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business.”⁷² While the Tenth Circuit

⁶⁴ *Id.*

⁶⁵ *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 86 F. Supp. 2d 1042, 1079 (D. Colo. 2000) (“*Concrete Works III*”).

⁶⁶ *Id.* at 1065-68.

⁶⁷ *Id.* at 1067.

⁶⁸ *Id.* at 1057-58, 1071.

⁶⁹ *Id.* at 1068.

⁷⁰ *Concrete Works IV*, 321 F.3d at 975-76.

⁷¹ *Id.* at 976 (quoting *Shaw v. Hunt*, 517 U.S. 804, 909 (1996)).

⁷² *Id.* at 976.



noted that the record contained “extensive evidence” of private sector discrimination, the question of the adequacy of private sector discrimination as the factual predicate for a race-based remedy was not before the court.⁷³

Ten months after *Concrete Works IV*, the question of whether a particular public sector race-based remedy is narrowly tailored when it is based solely on business practices within the private sector was at issue in *Builders Association of Greater Chicago v. City of Chicago*.⁷⁴ The plaintiff in *Builders Association of Greater Chicago* challenged the City’s construction set-aside program. The court considered pre-enactment and post-enactment evidence in support of the six-year-old MWBE program.⁷⁵ The challenged program consisted of a 16.9 percent MBE subcontracting goal, a 10-percent MBE prime contracting goal, a 4.5 percent WBE subcontracting goal and a 1 percent WBE prime contracting goal.⁷⁶

The district court found that private sector business practices offered by the city, which were based on United States Census data and surveys, constituted discrimination against minorities in the Chicago market area.⁷⁷ However, the district court did not find the City’s MWBE subcontracting goal to be a narrowly tailored remedy given the factual predicate. The court found that the study did not provide a meaningful, individualized review of MWBEs in order to formulate remedies “more akin to a laser beam than a baseball bat.”⁷⁸ The City was ordered to suspend its MWBE goals program.

As recently as 2010, the Fourth Circuit in *H.B. Rowe Co. v. Tippet* ruled that the State of North Carolina could not rely on private-sector data to demonstrate that prime contractors underutilized women subcontractors in the general construction industry.⁷⁹ The court found that the private sector data did not test whether the underutilization was statistically significant or just mere chance.⁸⁰

B. Systemic Discriminatory Exclusion

Croson established that a local government enacting a race-conscious contracting program must demonstrate identified systemic discriminatory exclusion on the basis of race or any other illegitimate criteria (arguably gender).⁸¹ Thus, it is essential to demonstrate a pattern and practice

⁷³ *Id.* at 959, 977, 990.

⁷⁴ *Builders Ass’n of Greater Chi. v. City of Chi.*, 298 F. Supp. 2d 725, 732 (N.D. Ill. 2003).

⁷⁵ *Id.* at 726, 729, 733-34.

⁷⁶ *Id.* at 729.

⁷⁷ *Id.* at 735-37.

⁷⁸ *Id.* at 737-39, 742.

⁷⁹ *Rowe*, 615 F.3d at 236.

⁸⁰ *Id.*

⁸¹ *Croson*, 488 U.S. at 492; see *Monterey Mech. Co. v. Pete Wilson*, 125 F.3d 702, 713 (9th Cir. 1997); see also *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218-20 (1999) (held the City’s MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the



of such discriminatory exclusion in the relevant market area.⁸² Using appropriate evidence of the entity's active or passive participation in the discrimination, as discussed above, past discriminatory exclusion must be identified for each racial group to which a remedy would apply.⁸³ Mere statistics and broad assertions of purely societal discrimination will not suffice to support a race- or gender-conscious program.

Croson enumerates two ways an entity may establish the requisite factual predicate of discrimination. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by an entity or by the entity's prime contractors may support an inference of discriminatory exclusion.⁸⁴ In other words, when the relevant statistical pool is used, a showing of statistically significant underutilization "may constitute prima facie proof of a pattern or practice of discrimination[.]"⁸⁵

The *Croson* Court made clear that both prime contract and subcontracting data were relevant.⁸⁶ The Court observed that "[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city's construction expenditures."⁸⁷ Subcontracting data is also an important means by which to assess suggested future remedial actions. Because the decision makers are different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level might also be different.

Second, "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."⁸⁸ Thus, if a local government has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁸⁹ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system "by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria."⁹⁰ *Croson* further states, "In the

recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions)).

⁸² *Croson*, 488 U.S. at 509.

⁸³ *Id.* at 506. (The Court stated in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination"); *See N. Shore Concrete & Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 * 55 (E.D.N.Y. April 12, 1998) (rejected the inclusion of Native Americans and Alaskan Natives in the City's program).

⁸⁴ *Croson*, 488 U.S. at 509.

⁸⁵ *Id.* at 501 (citing *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977)).

⁸⁶ *Id.* at 502-03.

⁸⁷ *Id.*

⁸⁸ *Croson*, 488 U.S. at 509.

⁸⁹ *Id.*

⁹⁰ *Id.* (emphasis added).



extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.”⁹¹

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy.⁹² The Court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁹³ The court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.⁹⁴

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁹⁵ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁹⁶

1. Geographic Market

Croson did not speak directly to how the geographic market is to be determined. In *Coral Construction*, the Ninth Circuit Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”⁹⁷ Conversely, in *Concrete Works I*, the district court specifically approved the Denver Metropolitan Statistical Area (MSA) as the appropriate market area since 80 percent of the construction contracts were based there.⁹⁸

Read together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. Because *Croson* and its progeny did not provide a bright line rule for local market area, the determination should be fact-based. An entity may include consideration of evidence of discrimination within its own jurisdiction.⁹⁹ Extra-jurisdictional evidence may be permitted, when it is reasonably related to where the jurisdiction contracts.¹⁰⁰

⁹¹ *Id.* (emphasis added).

⁹² *Coral Constr.*, 941 F.2d at 917-18, 920-26.

⁹³ *Id.* at 919.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* (quoting *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977) (“*Teamster*”)).

⁹⁷ *Coral Constr.*, 941 F.2d at 925.

⁹⁸ *Concrete Works I*, 823 F. Supp. at 835-836 (D. Colo. 1993); *rev'd on other grounds*, 36 F.3d 1513 (10th Cir. 1994).

⁹⁹ *Cone Corp. v. Hillsborough Cnty.*, 908 F.2d 908, 915 (11th Cir. 1990); *Associated Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d 1401, 1415 (9th Cir. 1991) (“*AGCC II*”).

¹⁰⁰ There is a related question of which firms can participate in a remedial program. In *Coral Construction*, the Court held that the definition of “minority business” used in King County’s MBE program was over-inclusive. The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated against in the King County business community. The program would have allowed, for instance, participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE had to have shown that it previously sought business or is currently doing business in the market area.



2. Current Versus Historical Evidence

In assessing the existence of identified discrimination through demonstration of a disparity between MBE utilization and availability, the entity should examine disparity data both prior to and after the entity's current MBE program was enacted. This is referred to as "pre-program" versus "post-program" data.

Croson requires that an MBE program be "narrowly tailored" to remedy current evidence of discrimination.¹⁰¹ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity. The absence of such evidence is considered arbitrary and unenforceable based on controlling Supreme Court and Fourth Circuit authority.¹⁰² MBE goals can only be justified by demonstrable evidence of the overall availability of minority and women-owned businesses in the relevant markets.¹⁰³

It is not mandatory to examine a long history of an entity's utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an MBE program based upon outdated evidence.¹⁰⁴ Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current MWBE utilization and availability.¹⁰⁵

3. Statistical Evidence

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the "disparity index," which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the population of available firms in the local market area.¹⁰⁶ Disparity indexes have been found highly probative evidence of

¹⁰¹ See *Croson*, 488 U.S. at 509-10.

¹⁰² *Associated Util. Contr. of Md., Inc. v. Mayor of Baltimore*, 83 F.Supp.2d 613 (D. Md. 2000).

¹⁰³ *Id.*

¹⁰⁴ *Croson*, 488 U.S. at 499 (stating, "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

¹⁰⁵ See *AGCC II*, 950 F.2d at 1414 (consultant study looked at City's MBE utilization over a one-year period).

¹⁰⁶ Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County's contracting and subcontracting statistics, the district court also considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County's Wainwright study (which compared construction business ownership rates of MWBEs to those of non-MWBEs and analyzed disparities in personal income between MWBE and non-MWBE business owners), and the County's Brimmer Study (which focused only on Black-owned construction firms and looked at whether disparities existed when the sales and receipts of Black-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms). The court affirmed the judgment that declared appellant's affirmative action plan for awarding county construction contracts unconstitutional and enjoined the plan's operation because there was no statistical evidence of past discrimination and appellant failed to consider race and ethnic-neutral alternatives to the plan.



discrimination where they ensure that the “relevant statistical pool” of minority or women contractors is being considered.¹⁰⁷

The Third Circuit Court of Appeals, in *Philadelphia VI*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace but also are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability was composed of those merely licensed to operate in the City of Philadelphia. A license to do business with the City, standing alone, does not indicate either willingness or capability to do work for the City. The Court concluded that this particular statistical disparity did not satisfy *Croson*.¹⁰⁸

When using a pool of relevant statistical evidence, a disparity between the utilization and availability of MWBEs can be shown in more than one way. First, the number of MWBEs utilized by an entity can be compared to the number of available MWBEs. This is a strict *Croson* “disparity” formula. A significant statistical disparity between the number of MWBEs that an entity utilizes in a given industry and the number of available MWBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, MWBE dollar participation can be compared to MWBE availability. This comparison could show a disparity between an entity’s award of contracts to available market area non-minority male businesses and the award of contracts to MWBEs. Thus, in *AGCC II*, the court found constitutional the comparison of an independent consultant’s study which “compared the number of available MBE prime construction contractors in San Francisco with the amount of contract dollars awarded by the City to San Francisco-based MBEs” over a one-year period.¹⁰⁹ The study that was under review in *AGCC I* found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.¹¹⁰ *AGCC I* argued to the Ninth Circuit that the preferences given to MBEs violated the equal protection clause of the Fourteenth Amendment of the United States Constitution. The district court determined that *AGCC* only demonstrated a possibility of irreparable injury on the ground that such injury is assumed where constitutional rights have been alleged to be violated, but failed to demonstrate a likelihood of success on the merits.¹¹¹ On appeal, The Ninth Circuit affirmed the district court’s ruling.¹¹²

¹⁰⁷ *Rowe*, 615 F.3d at 236; see *Dade County I*, 943 F. Supp. at 1546, *aff’d*, 122 F.3d 895 (11th Cir. 1997); see also *Concrete Works II*, 36 F.3d at 1513.

¹⁰⁸ *Philadelphia VI*, 91 F.3d at 601-602. The courts have not spoken to the non-MWBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-MWBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of MWBEs should be applied to non-MWBEs.

¹⁰⁹ *AGCC II*, 950 F.2d at 1414 (*discussing AGCC I*, 813 F.2d 922 (9th Cir. 1987)).

¹¹⁰ *AGCC I*, 214 F.3d 730 (6th Cir. 2000); *Id.* at 1414. Specifically, the study found that MBE availability was 49.5 percent for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

¹¹¹ *AGCC I*, 813 F.2d 922 (9th Cir. 1987).

¹¹² *Id.* at 1401.



Whether a disparity index supports an inference that there is discrimination in the market area depends not only on what is being compared, but also on the statistical significance of any such disparity. In *Croson*, Justice O'Connor opined, “[w]here the gross statistical disparities can be shown, they alone, in a proper case, may constitute a *prima facie* proof of a pattern or practice of discrimination.”¹¹³ However, the Court has not assessed or attempted to cast bright lines for determining if a disparity index is sufficient to support an inference of discrimination. In the absence of such a formula, the Tenth Circuit determined that the analysis of the disparity index and the findings of its significance are to be judged on a case-by-case basis.¹¹⁴

Following the dictates of *Croson*, courts may carefully examine whether there is data that show MBEs are qualified, ready, willing, and able to perform.¹¹⁵ *Concrete Works II* made the same point: capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the marketplace overstates “the ability of MBEs or WBEs to conduct business relative to the industry as a whole because MWBEs tend to be smaller and less experienced than non-minority owned firms.” In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.¹¹⁶

Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of MWBE capacity to perform Denver’s public sector contracts.

The Sixth Circuit Court of Appeals, in *Associated General Contractors of Ohio, Inc. v. Drabik* (“*Drabik*”), concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.¹¹⁷ The State’s factual predicate study based its statistical evidence on the percentage of MBE businesses in the population. The statistical evidence “did not take into account the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.”¹¹⁸ The court reasoned as follows:

Even statistical comparisons that might be apparently more pertinent, such as with the percentage of all firms qualified in some minimal sense, to perform the work

¹¹³ *Croson*, 488 U.S. at 501 (quoting *Hazelwood Sch. Dist.*, 433 U.S. at 307-308).

¹¹⁴ *Concrete Works II*, 36 F.3d at 1522.

¹¹⁵ The *Philadelphia* study was vulnerable on this issue.

¹¹⁶ *Concrete Works II*, 36 F.3d at 1528.

¹¹⁷ *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 734-38 (6th Cir. 2000) (“*Drabik*”). The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 713 F.2d 167, 176 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

¹¹⁸ *Drabik*, 214 F.3d at 736.



in question, would also fail to satisfy the Court's criteria. If MBEs comprise 10 percent of the total number of contracting firms in the State, but only get 3 percent of the dollar value of certain contracts that does not alone show discrimination, or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have resources to complete.¹¹⁹

Drabik also pointed out that the State not only relied upon the wrong type of statistical data, but also that the datasets were more than twenty years old. Therefore, an entity must study current data that indicate the availability and qualifications of the MBEs.

The opinions in *Philadelphia VI*¹²⁰ and *Dade County I*,¹²¹ regarding disparity studies involving public sector contracting, are particularly instructive in defining availability. In *Philadelphia VI*, the earlier of the two decisions, contractors' associations challenged a city ordinance that created set-asides for minority subcontractors on city public works contracts. A summary judgment was granted for the contractors.¹²² The Third Circuit upheld the third appeal, affirming that there was no firm basis in evidence for finding that race-based discrimination existed to justify a race-based program and that the program was not narrowly tailored to address past discrimination by the City.¹²³

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether it is strong enough to infer discrimination is a "close call" which the court "chose not to make."¹²⁴ It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, a subcontracting program was not narrowly tailored to remedy prime contracting discrimination.¹²⁵

When the court looked at subcontracting, it found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25 to 30 percent of project engineer logs on projects valued at more than \$30,000.¹²⁶ The consultant determined that no MBEs were used during the study period based upon recollections of the former general counsel to the General and Specialty Contractors Association of Philadelphia regarding whether the owners of

¹¹⁹ *Id.*

¹²⁰ *Philadelphia VI*, 91 F.3d at 604-605.

¹²¹ *Dade County I*, 943 F. Supp. at 1582-83.

¹²² *Philadelphia VI*, 91 F.3d at 590.

¹²³ *Id.* at 609-10.

¹²⁴ *Id.* at 605.

¹²⁵ *Philadelphia VI*, 91 F.3d at 605.

¹²⁶ *Id.* at 600.



the utilized firms were MBEs. The court found this evidence insufficient as a basis for finding that prime contractors in the market area were discriminating against subcontractors.¹²⁷

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity and that the practicality of the approach should also be weighed. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE” and that it was a “reasonable choice” under the circumstances to use a list of MWBE certified contractors as a source for available firms.¹²⁸ Although theoretically it may have been possible to adopt a more refined approach, the court found that using the list of certified contractors was a rational approach to identifying qualified firms.¹²⁹

In order to qualify for certification, the federal certification program required firms to detail their bonding capacity, size of prior contracts, number of employees, financial integrity, and equipment owned. According to the court, “the process by which the firms were certified [suggests that] those firms were both qualified and willing to participate in public works projects.”¹³⁰ The court found certification to be an adequate process of identifying capable firms, recognizing that the process may even understate the availability of MBE firms.¹³¹ Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of “willingness” and stated, “[p]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”¹³²

In *Dade County I*, the district court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the MWBEs was taken into account.¹³³ The *Dade County* district court accepted the disparity study’s limiting of “available” prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. If the

¹²⁷ Another problem with the program was that the 15 percent goal was not based on data indicating that minority businesses in the market area were available to perform 15 percent of the City’s contracts. The court noted, however, that “we do not suggest that the percentage of the preferred group in the universe of qualified contractors is necessarily the ceiling for all set-asides.” The court also found the program flawed because it did not provide sufficient waivers and exemptions, as well as consideration of race-neutral alternatives.

¹²⁸ *Philadelphia VI*, 91 F.3d at 603.

¹²⁹ *Philadelphia VI*, 91 F.3d at 603-605, 609.

¹³⁰ *Id.* at 603.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Dade County I*, 943 F. Supp. at 1560.



solicitation of bidders is biased, then the results of the bidding process will be biased.¹³⁴ In addition, a comprehensive count of bidders is dependent on the adequacy of the agency's record-keeping.¹³⁵

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the MWBE program. It merely ascertained that the lower court was not clearly erroneous in concluding that the County lacked a strong basis in evidence to justify race-conscious affirmative action.¹³⁶ The appellate court did not prescribe the district court's analysis or any other specific analysis for future cases.

C. Anecdotal Evidence

In *Croson*, Justice O'Connor opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."¹³⁷ Anecdotal evidence should be gathered to determine if minority contractors are systematically being excluded from contracting opportunities in the relevant market area. Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies, such as outreach to all segments of the business community regardless of race. They are not intrusive and, in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures, such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.¹³⁸

As discussed below, anecdotal evidence alone is insufficient to establish the requisite predicate for a race-conscious program. Its great value lies in pointing to remedies that are "narrowly tailored," the second prong of a *Croson* study. The following types of anecdotal evidence have been presented to and relied upon by the Ninth Circuit in both *Coral Construction* and *AGCC II*, to justify the existence of an MWBE program:

¹³⁴ Cf. *League of United Latin Am. Citizens v. Santa Ana*, 410 F. Supp. 873, 897 (C.D. Cal. 1976); *Reynolds v. Sheet Metal Workers, Local 102*, 498 F. Supp. 952, 964 n. 12 (D. D.C. 1980), *aff'd*, 702 F.2d 221 (D.C. Cir. 1981) (involving the analysis of available applicants in the employment context).

¹³⁵ Cf. *EEOC v. Am. Nat'l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir. 1981), *cert. denied*, 459 U.S. 923 (1981) (in the employment context, actual applicant flow data may be rejected where race coding is speculative or nonexistent).

¹³⁶ *Dade County I*, 943 F. Supp. at 1557.

¹³⁷ *Croson*, 488 U.S. at 509; *see Teamsters*, 431 U.S. at 338.

¹³⁸ Cf. *AGCC II*, 950 F.2d at 1417-18 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that "the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed. In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]").



- MWBEs denied contracts despite being the low bidders — *Philadelphia*¹³⁹
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs — *Cone Corporation v. Hillsborough County*¹⁴⁰
- MWBEs' inability to obtain contracts for private sector work — *Coral Construction*¹⁴¹
- MWBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties — *AGCC II*¹⁴²
- Attempts to circumvent MWBE project goals — *Concrete Works II*¹⁴³
- Harassment of MWBEs by an entity's personnel to discourage them from bidding on an entity's contracts — *AGCC II*¹⁴⁴

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.¹⁴⁵ Presumably, courts would look more favorably upon anecdotal evidence in support of a less intrusive program than it would in support of a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists MWBEs.¹⁴⁶ However, these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, the *Croson* Court found that the City of Richmond’s MBE program was unconstitutional, because the City failed to provide a factual basis to support its MBE program. However, the Court opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”¹⁴⁷

In part, it was the absence of statistical evidence that proved fatal to the program. The Supreme Court stated that “[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.”¹⁴⁸

¹³⁹ *Philadelphia IV*, 6 F.3d at 1002.

¹⁴⁰ *Cone Corp.*, 908 F.2d at 916.

¹⁴¹ For instance, where a small percentage of an MBE or WBE’s business comes from private contracts and most of its business comes from race or gender-based set-asides, this would demonstrate exclusion in the private industry. *Coral Constr.*, 941 F.2d at 933 (WBE’s affidavit indicated that less than 7 percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

¹⁴² *AGCC II*, 950 F.2d at 1415.

¹⁴³ *Concrete Works II*, 36 F.3d at 1530.

¹⁴⁴ *AGCC II*, 950 F.2d at 1415.

¹⁴⁵ *Wygant*, 476 U.S. at 283.

¹⁴⁶ *Teamsters*, 431 U.S. at 339; *Coral Constr.*, 941 F.2d at 919.

¹⁴⁷ *Croson*, 488 U.S. at 509 (citing *Teamsters*, 431 U.S. at 338).

¹⁴⁸ *Id.* at 480.



This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate records contained the affidavits of “at least 57 minority or women contractors, each of whom complain in varying degree of specificity about discrimination within the local construction industry . . . These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”¹⁴⁹

Nonetheless, this anecdotal evidence alone was insufficient to justify King County’s MBE program since “[n]otably absent from the record, however, is *any* statistical data in support of the County’s MBE program.”¹⁵⁰ After noting the Supreme Court’s reliance on statistical data in Title VII employment discrimination cases and cautioning that statistical data must be carefully used, the court elaborated on its mistrust of purely anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.¹⁵¹

The court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that “rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.”¹⁵²

Two other circuit courts also suggested that anecdotal evidence might be dispositive in rare and exceptional cases, if ever, while rejecting it in the specific case before them. For example, in *Philadelphia IV*, the Third Circuit Court of Appeals noted that the Philadelphia City Council had “received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination,” which the district court had “discounted” because it deemed this evidence to be “impermissible” for consideration under *Croson*.¹⁵³ The Third Circuit Court disapproved of the district court’s actions because in its view the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.¹⁵⁴ “Yet,” the court stated:

Given *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, *supra*]. Although

¹⁴⁹ *Coral Constr.*, 941 F.2d at 917-18.

¹⁵⁰ *Id.* at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

¹⁵¹ *Coral Constr.*, 941 F.2d at 919.

¹⁵² *Id.*

¹⁵³ *Philadelphia IV*, 6 F.3d at 1002.

¹⁵⁴ *Id.* at 1003.



anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁵⁵

The District of Columbia Circuit Court echoed the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent in *O’Donnell Construction v. District of Columbia*.¹⁵⁶ The court found that, in the face of conflicting statistical evidence, the anecdotal evidence there was not sufficient:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. (internal citation omitted.) The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy (internal quotes and citation omitted). Anecdotal evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹⁵⁷

The Eleventh Circuit in *Dade County II* is also in accord. In applying the “clearly erroneous” standard to its review of the district court’s decision in *Dade County II*, it commented that “[t]he picture painted by the anecdotal evidence is not a good one.”¹⁵⁸ However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.¹⁵⁹

In *Concrete Works II*, the Tenth Circuit Court of Appeals described the anecdotal evidence that is most compelling as evidence within a statistical context. In approving of the anecdotal evidence marshaled by the City of Denver in the proceedings below, the court recognized that “[w]hile a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.”¹⁶⁰ The court noted that the City had provided such systemic evidence.

The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.¹⁶¹ There, the court approved a “vast number of individual accounts of discrimination,” which included (1) numerous reports of MBEs denied contracts despite being the low bidder, (2) MBEs told that they were not qualified although they were later found to be

¹⁵⁵ *Id.*

¹⁵⁶ 963 F. 2d 420, 427 (D.C. Cir. 1992).

¹⁵⁷ *O’Donnell*, 963 F.2d at 427.

¹⁵⁸ *Dade County II*, 122 F.3d at 925.

¹⁵⁹ *Id.* at 926.

¹⁶⁰ *Concrete Works II*, 36 F.3d at 1530.

¹⁶¹ *AGCC II*, 950 F.2d at 1401.



qualified when evaluated by outside parties, (3) MBEs refused work even after they were awarded the contracts as low bidder, and (4) MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City pointed to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the city's procurement processes, an "old boy's network" still exists, and racial discrimination is still prevalent within the San Francisco construction industry.¹⁶² Based on *AGCC II*, it would appear that the Ninth Circuit's standard for acceptable anecdotal evidence is more lenient than other Circuits that have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. Anecdotal evidence alone may, in exceptional cases, show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan, but it must be so dominant and pervasive that it passes muster under the *Croson* standards.¹⁶³ Pursuant to *Croson* and its progeny, case law suggests that, to be optimally persuasive, anecdotal evidence collectively should satisfy six particular requirements. These requirements are that the accounts:

- Are gathered from minority contractors, preferably those that are "qualified"¹⁶⁴
- Concern specific, verifiable instances of discrimination¹⁶⁵
- Involve the actions of governmental officials¹⁶⁶
- Involve events within the relevant jurisdiction's market area¹⁶⁷
- Discuss the harm that the improper conduct has inflicted on the businesses in question¹⁶⁸
- Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.¹⁶⁹

Given that neither *Croson*, nor its progeny identify the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support an MBE program. However, the foregoing cases provide some guidance by implication. *Philadelphia IV* makes clear that 14 anecdotal accounts standing alone will not suffice.¹⁷⁰ The court then turned to the statistical data.¹⁷¹ While the matter is not free of countervailing considerations, 57 accounts, many of which

¹⁶² *AGCC II*, 950 F.2d at 1415.

¹⁶³ *Philadelphia IV*, 6 F.3d at 1003. The anecdotal evidence must be "dominant or pervasive."

¹⁶⁴ *Philadelphia VI*, 91 F.3d at 603.

¹⁶⁵ *Coral Constr.*, 941 F.2d at 917-18; but see *Concrete Works IV*, 321 F.3d at 989 ("There is no merit to [plaintiff's] argument that the witnesses' accounts must be verified to provide support for Denver's burden.").

¹⁶⁶ *Croson*, 488 U.S. at 509.

¹⁶⁷ *Coral Constr.*, 941 F.2d at 925.

¹⁶⁸ *O'Donnell*, 963 F.2d at 427.

¹⁶⁹ *Coral Constr.*, 941 F.2d at 919.

¹⁷⁰ *Philadelphia IV*, 6 F.3d. at 1002-03.

¹⁷¹ *Id.*



appeared to be of the type referenced above, were insufficient without statistical data to justify the program in *Coral Construction*. Therefore, no court has provided rules on the number of anecdotal evidence that is needed in conjunction with statistical evidence to pass constitutional muster.

The quantum of anecdotal evidence that a court would likely find acceptable will depend on the proposed remedy. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification.

VI. Consideration of Race-Neutral Options

A remedial program must address the source of the disadvantage faced by minority businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.¹⁷² An MBE program cannot stand if the sole barrier to MWBE participation is a barrier that is faced by all new businesses, regardless of ownership.¹⁷³ If the evidence demonstrates that the sole barrier to MWBE participation is that MWBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹⁷⁴ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral.

The requirement that race-neutral measures be considered does not mean that they must be exhausted before race-conscious remedies can be employed. The Supreme Court explained that although “narrow tailoring does not require exhaustion of every conceivable race-neutral alternative” it “does require serious, good faith consideration of workable race-neutral alternatives that will achieve ... diversity[.]”¹⁷⁵

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found as detailed above in *Section IV*. If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁷⁶

¹⁷² *AGCC II*, 950 F.2d at 1404.

¹⁷³ *Croson*, 488 U.S. at 508.

¹⁷⁴ *Id.* at 507.

¹⁷⁵ *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).

¹⁷⁶ *Croson*, 488 U.S. at 507 (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).



The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁷⁷ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contract programs that have been implemented to improve MBE utilization should also be measured.¹⁷⁸

VII. Conclusion

The decision of the United States Supreme Court in the *Croson* case changed the legal landscape for local governments’ business affirmative action programs. The United States Supreme Court altered the authority of a local government to use local funds to institute remedial race-conscious public contracting programs. This chapter has examined what *Croson* and its progeny require for a local government to institute a constitutional race and/or gender-conscious public contracting program.

Consistent with the case law, any race or gender-conscious recommendations for the Baltimore County Code that are presented in this Disparity Study will be based on a constitutionally sound factual predicate. The methodology employed to conduct the Disparity Study will determine if the County has a compelling interest to implement a race or gender-based program. The analysis is based on statistical evidence that is limited to the County’s market area, and the statistical model used in the disparity analysis is consistent with the standards proscribed in *Croson* progeny and tailored to the Fourth Circuit precedent. The disparity findings for prime contracts and subcontracts are calculated separately by industry, ethnicity, and gender.

Depending on the statistical findings of the Disparity Study, Baltimore County may consider race and gender-based remedies in the award of its contracts. Given the case law discussed in this chapter, any race or gender-conscious affirmative action contracting program recommended in this Disparity Study will be based on a constitutionally sound factual predicate.



¹⁷⁷ *Coral Constr.*, 941 F.2d at 910.

¹⁷⁸ *Dade County II*, 122 F.3d at 927. At the same time, the Eleventh Circuit’s caveat in *Dade County* should be kept in mind: “Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment.” For additional guidance, *see supra* section II, Standard of Review for the discussion of narrow tailoring in *Concrete Works IV*, *Adarand*, *County of Cook*, and *City of Chicago*.

VIII. List of Authorities

Cases	Pages
<i>Adarand Constructors, Inc. v. Slater</i> , 228 F.3d 1147 (10th Cir. 2000)	9
<i>Armour v. City of Indianapolis, Ind.</i> , 132 S. Ct. 2073 (2012)	6
<i>Associated Gen. Contractors of Cal. v. City & Cnty. of San Francisco (“AGCC I”)</i> , 813 F.2d 922 (9th Cir. 1987)	4, 6
<i>Associated Gen. Contractors v. Coal. for Econ. Equity (“AGCC II”)</i> , 950 F.2d 1401 (9th Cir. 1991)	<i>passim</i>
<i>Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik”)</i> , 214 F.3d 730 (6th Cir. 2000)	17
<i>Associated Gen. Contractors v. New Haven</i> , 791 F. Supp. 941 (D. Conn. 1992)	7
<i>Associated Util. Contr. of Md., Inc. v. Mayor of Baltimore</i> , 83 F.Supp.2d 613 (D. Md. 2000)	3
<i>Builders Ass’n of Greater Chi. v. City of Chi.</i> , 298 F. Supp. 2d 725 (N.D. Ill. 2003)	12
<i>Builders Ass’n of Greater Chicago v. Cnty. of Cook</i> , 256 F.3d 642 (7th Cir. 2001)	5
<i>City of Richmond v. J.A. Croson Co. (“Croson”)</i> , 488 U.S. 469 (1989)	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works I”)</i> , 823 F. Supp. 821 (D. Colo. 1993)	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works II”)</i> , 36 F.3d 1513 (10th Cir. 1994)	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works III”)</i> , 86 F. Supp. 2d 1042 (D. Colo. 2000)	10, 11
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works IV”)</i> , 321 F.3d 950 (10th Cir. 2003)	4, 9, 10, 11



<i>Concrete General Inc v. Washington Suburban Sanitary Commission,</i> 739 F. Supp 370 (1991)	3
<i>Cone Corp. v. Hillsborough Cnty.,</i> 908 F.2d 908 (11th Cir. 1990)	14, 20
<i>Contractors Ass’n of E. Pa. v. City of Philadelphia (“Philadelphia IV”),</i> 6 F.3d 990 (3d Cir. 1993)	4, 5, 20, 22, 23, 24
<i>Contractors Ass’n of E. Pa. v. City of Philadelphia (“Philadelphia V”),</i> 893 F. Supp. 419 (E.D. Pa.1995)	7
<i>Contractors Ass’n of E. Pa v. City of Philadelphia (“Philadelphia VI”),</i> 91 F.3d 586 (3rd Cir. 1996)	passim
<i>Coral Constr. Co. v. King Cnty.,</i> 941 F.2d 910 (9th Cir. 1991)	passim
<i>Dickerson Carolina, Inc. v. Harrelson,</i> 114 N.C. App. 693 (1994)	25
<i>Doe I v. Lower Merion Sch. Dist.,</i> 689 F. Supp. 2d 742 (E.D. Pa. 2010)	7
<i>EEOC v. Am. Nat’l Bank,</i> 652 F.2d 1176 (4th Cir. 1981)	19
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County I”),</i> 943 F. Supp. 1546 (S.D. Fla. 1996)	9, 15, 18, 19, 20
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County II”),</i> 122 F.3d 895 (11th Cir. 1997)	3, 4, 5, 15, 23, 28
<i>Ensley Branch N.A.A.C.P. v. Seibels,</i> 31 F.3d 1548 (11th Cir. 1994)	4, 5
<i>Florida AGC Council, Inc. v. Florida,</i> 303 F. Supp. 2d 1307 (N.D. Fla. 2004)	3
<i>Grutter v. Bollinger,</i> 539 U.S. 306 (2003)	28
<i>Hayes v. N. State Law Enforcement Officers Ass’n,</i> 10 F.3d 207 (4th Cir. 1993)	5



<i>Hazelwood Sch. Dist. v. United States</i> , 433 U.S. 299 (1977)	13, 16
<i>H.B. Rowe Co. v. N.C. Dep’t of Transp. (“Rowe”)</i> , 615 F.3d 233 (4th Cir. 2010)	<i>passim</i>
<i>Hershell Gill Consulting Eng’rs, Inc. v. Miami-Dade Cnty.</i> , 333 F. Supp. 2d 1305 (S.D. Fla. 2004)	9
<i>Int’l Bhd. of Teamsters v. United States (“Teamsters”)</i> , 431 U.S. 324 (1977)	14, 21
<i>Johnson v. Board of Regents of the University of Georgia</i> , 263 F.3d 1234, 1244 (11th Cir. 2001)	9
<i>Lakeside Roofing Company v. State of Missouri, et al.</i> , 2012 WL 709276 (E.D.Mo. Mar. 5, 2012)	4
<i>League of United Latin Am. Citizens v. Santa Ana</i> , 410 F. Supp. 873 (C.D. Cal. 1976)	19
<i>Maryland Minority Contractors Ass’n v. Maryland Stadium Authority</i> , 70 F.Supp.2d 580 (D. Md. 1998).	3
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<i>Monterey Mech. Co. v. Pete Wilson et al.</i> , 125 F.3d 702 (9 th Cr. 1997)	12
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<i>W.H. Scott Constr. Co. v. City of Jackson</i> , 199 F.3d 206 (1999)	12
<i>Wygant v. Jackson Bd. of Educ.</i> , 476 U.S. 267 (1986)	7, 8, 21



CHAPTER 2: Procurement Practices and Procedures Analysis

I. Introduction

This chapter is an overview of Baltimore County's (County), procurement policies and procedures. The relevant statutes, regulations, and manuals governing the County's construction, professional services, and goods and services procurements during the July 1, 2012, to June 30, 2017 study period are examined.

Baltimore County, founded in 1659, is one of 24 counties in the State of Maryland. The County is the third-most populous county in the State, encompassing 682 square miles. There is a County Executive and the legislative branch is the County Council.

II. Governing Laws and Regulations

The applicable legislation governing the County's procurement policies and procedures is presented in Table 2.1.

Table 2.1: Baltimore County's Governing Laws and Regulations

Baltimore County
Code of Baltimore County Regulations, Article 10, Title 2 Professional Services Selection Committee Executive Order, January 29, 2010 Baltimore County, Maryland, Purchasing Manual, February 2015
State of Maryland
Title 21, State Procurement Regulations

III. Industry Definitions

Construction: the erection or rehabilitation of a road, bridge, street, building, water, sewer, stormwater facility or any similar physical structure or facility necessary in carrying out the activities of the County government; and the repair or maintenance projects undertaken by the County to restore service, buildings, infrastructure, and facilities if the project would extend or renew the service life of the building, infrastructure, or facility for a period equal to the average life of the county's long-term debt issuances or longer.¹⁷⁹



¹⁷⁹ Baltimore County Code, Article 10, Title 2, Subtitle 1, Section 10-2-101 (d)(2).

Professional Services: capital improvement services within the scope of practices of architecture, landscaping, landscape architecture, or professional engineering as defined by the laws of the State of Maryland or services performed by any architect, landscape architect, or professional engineering in connection with the professional employment or practice.¹⁸⁰

Goods and Services: Goods: an article of trade or value that moveable or tangible and is produced or used as the subject of trade or commerce, including goods, materials, software, supplies, equipment, and utilities.¹⁸¹ **Services:** rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. Included is the professional, personal, and/or contractual services provided by attorneys, accountants, physicians, consultants, appraisers, and other professionals, and for which the service is associated with the provision of expertise or labor, or both..¹⁸²

IV. Procurement Process and Procedures

A. Overview

The Purchasing and Disbursement Division within the County's Office of Budget and Finance provides centralized purchasing and contracting services for County departments. The County purchases construction, professional services, architecture and engineering, and goods and services through three procurement methods. The methods are 1) informal bids, 2) formal bids, and 3) non-competitive procurements.

Small purchases are procured using petty cash, a procurement card, a General Accounting Expense (GAX) and open market purchases. Verbal quotes, and request for quotations (RFQ) are used to solicit informal bids. Request for Proposals (RFPs) and Request for Bids are used for formal purchases. Non-competitive procurements include sole source purchases, brand named, and emergency purchases.

B. Informal Purchases

All purchases for construction, professional services, and goods and services valued less than \$25,000 are classified as informal. There are three methods used to make informal purchases. They include small purchases, open market purchases and request for quotations or bids.

1. Small Purchases

Small purchases are limited to construction, professional services, and goods and services valued up to \$1,000. The agency's petty cash fund is used for purchases valued up to \$100. Procurement

¹⁸⁰ *Professional Services Selection Committee Executive Order*, Baltimore County, dated January 29, 2010.

¹⁸¹ *Baltimore County, Maryland, Purchasing Manual*, Purchasing Division Office of Budget and Finance Towson, page 6, dated February 2015.

¹⁸² *Baltimore County, Maryland, Purchasing Manual*, Purchasing Division Office of Budget and Finance Towson, page 11, dated February 2015. The term "services" does not include services within the definition of Professional Services under the Professional Services Selection Committee Executive Order of January 29, 2010.



cards or GAX is used for purchases valued up to \$1,000. The Approving Official is the agency head or designee. For commodities, the purchasing agency must confirm that the item is not available on an existing County contract before securing a purchase. Additionally, the purchase of certain commodities requires approval of agencies that are authorized to manage the procurement prior to purchase.

2. Open Market Purchases

Open market purchases are limited to construction, professional services, and goods and services valued from \$1,001 to \$5,000. User agencies are required to provide two weeks lead time for open market purchases, because the buyer needs at least one-week lead time to select and award an open market purchase.¹⁸³ Open market purchases can be approved by the buyer or user agency.

3. Request for Quotations

Purchases valued from \$5,001 to \$25,000 are solicited through request for quotations or bids. A four-week lead time for selection and award is required for informal quotations or bids. At least three bids should be solicited, and the contract is awarded to the lowest responsive and responsible bidder. Informal purchases are approved by the Purchasing Division. Purchases for services valued under \$25,000 may require Council approval if the County 1) has contracted with the same vendor for more than two years or 2) the new contract term period exceeds two years.

C. Formal Purchases

Construction, professional services, architecture and engineering, and goods and services purchases valued over \$25,000 are competitively solicited and publicly advertised.

1. Request for Bids

Request for bids are used for construction and goods and services purchases except for non-standard commodities and complex services. The award is based on the lowest responsive and responsible bidder. The bid is advertised by posting the notice on a public bulletin board, the County's website and on eMaryland Marketplace, Maryland eprocurement system per Code of Maryland Regulations (COMAR). The Purchasing Agent may also advertise the notice in a newspaper or other media outlets.

Formal bids are publicly opened and awarded to the lowest responsive and responsible bidder not earlier than three business days after the bid opening. When there is a tie for the lowest bid, and quality and service are considered equal, the contract is awarded to the bidder who is a qualified minority. If the lowest bidders are both minorities, the contract is awarded to the local minority bidder.



¹⁸³ A "buyer" is an agent of the County, employed by the Purchasing Division, whose responsibilities include the purchase of goods and services. *Baltimore County, Maryland, Purchasing Manual, Purchasing Division Office of Budget and Finance Towson*, page 6, dated February 2015.

a. Prequalification Process for Construction Projects

To bid a Department of Public Work's capital construction contract, the prime contractor must be prequalified. The pre-qualification process for construction projects is managed by the Prequalification Committee (Committee). The Committee's responsibilities in the prequalification process includes 1) approval of the prime contractor's prequalification status, 2) suspension and revocation of the prime contractor's prequalification, and 3) assignment of work requiring prequalification.

The Committee is also responsible for classifications and determining the need for prime contractors on all projects built by or accepted by the County, including construction, reconstruction, or demolition of physical facilities, and capital improvement projects in excess of \$25,000. The Committee also determines the need for prime contractors on County right-of-way of projects.

The Prequalification Committee is comprised of three staff persons from the Department of Public Works (DPW). The standing committee members are 1) the Director or designee who serves as the Committee's Chairperson, 2) the Chief of the Division of Construction Contracts Administration, and 3) the Chief of the Design Division. The Committee may also include staff from the Office of Law, Office of Budget and Finance, Assistant to the Director of the Department of Public Works, Minority Business Enterprise Officer, Property Management Division, the Department of Public Works' Bureau of Engineering and Construction, and the Chief of the Office of Budget and Finance.

Bidders must be prequalified at least ten calendar days prior to bid opening, otherwise, the bid will not be accepted. The prequalification process is completed within 30 calendar days provided the applicant has provided all required information and documentation. The prequalification application must include:

- Documents identifying individuals who may legally bind the firm
- Summary of prior three years of relevant public and private work
- Description of firm's financial condition
- Staffing level
- Description of facilities and equipment
- Capacity and type of work qualified to perform at one time
- Type, model, year of manufacture, value, and condition of owned or permanently leased equipment and facilities related to the requested work
- Bonding company
- Other business names used

The contractor's prior work experience must be completed with 50% or more of the contractor's own forces.¹⁸⁴ The prequalification certificate is valid for 36 months, unless the contractor's

¹⁸⁴ Unless otherwise specified in the Department of Public Works' Standard Specifications for Construction and Materials, as amended and supplemented.



certificate was issued for a probationary term of 12 months. Contractors may appeal the denial of their prequalification application within 30 calendar days from the date of the Committee's written denial. The Committee's decision is final.

Contractors may receive limited prequalification status pertaining to their work classification. Qualification status can be restricted based on the contractor's prequalification status and bonding capability. A conditional prequalification is made at the discretion of the Prequalification Committee. The factors are the Committee's evaluation of the contractor's past performance, responsiveness, financial condition, or any other criteria in the best interest of the County. Contractors can apply for an increase to either a qualified limit, qualification limit, or work classifications six months after the Committee's final decision on the contractor's previous application.

b. Capital Improvement Contracts

Capital improvement projects are construction or reconstruction of any road, bridge, storm drain, water, sewer, building, park, or any physical structure or facility. Repair or maintenance contracts to restore service, buildings, or facilities are not considered capital improvement projects.¹⁸⁵ The Department of Public Works is authorized to prepare, review, and approve capital improvement contracts valued over \$25,000.

To bid on capital improvement contracts, bidders must be pre-qualified. Bidders can be exempt from the prequalification requirement by the Purchasing Agent. Projects that are categorically exempt from the prequalification requirement include roof repairs, carpet and tile replacements, aluminum or vinyl siding, and painting.

To bid a project requiring prequalification, the bidders must submit their current prequalification certification at least ten County business days prior to the bid opening date. Bids may be submitted on more than one project in the same time period if the total bid does not exceed the limit of the contractor's prequalification eligibility status.

Capital improvement projects are awarded to the lowest responsive and responsible bidder. The intent to award requires approval of the Director of the Department of Public Works, the Director of the Office of Budget and Finance, and the Administrative Officer. The award is made by the Department of Public Works.

2. Request for Proposals

The Request for Proposals is the procurement method used to solicit technical, professional and contractual services for contracts over \$25,000, and commodities or capital improvement contracts when a formal bid is not appropriate or feasible. Specifically, this formal procurement method is used to purchase:



¹⁸⁵ Unless the project could extend or renew the service life of the facility longer than the average life of the County's long-term debt issuances.

- Complex and sophisticated systems
- Provision of financing
- Commodities that are impractical or impossible to prepare adequate formal specifications
- Capital improvement projects

The Request for Proposals describes the goods or services being solicited, information on the required specifications and forms, and the date, time, and place for receipt of the proposal. Request for Proposals are posted on the County's bulletin boards, the County's website and on eMaryland Marketplace, Maryland eprocurement system per COMAR. The Purchasing Agent may advertise the solicitation in general circulation newspapers, media outlets, mailings, and the Internet.

3. Professional Engineering, Architecture and Landscaping Architecture

Consultants that provide professional engineering, architecture, and landscape architecture services must be prequalified to respond to the County's Request for Proposals. Subconsultants and all firms that comprise a joint venture must be prequalified by Professional Services Selection Committee (PSSC). The PSSC is comprised of six members, including 1) the Director of the Department of Public 2) the Chief of the Bureau of Engineering and Construction or the Chief of Design, 3) the Director of the Office of Budget and Finance or the Director's designee, and 4) three public members appointed by the County Executive. The PSSC is charged with the following responsibilities:

- Prequalify consultants
- Maintain a directory of prequalified firms
- Determine the type and scope of projects that applicants are qualified to perform
- Review request for professional services from County agencies
- Evaluate proposal submittals to select first and alternate choice

To maintain their prequalification status, consultants are required to submit a statement of prequalification and performance data annually. Firms denied prequalification may appeal the decision to the PSSC and further appeal to the County Administrative Officer for review. Unsuccessful proposers may request a debriefing session with the Chief of Design. The PSSC considers, but is not limited to, the following information when prequalifying applicants:

- Architects, landscape architects and engineers must be licensed by the State of Maryland
- Expertise of key consultant staff or associates
 - Tenure with the firm
 - Years active in discipline
 - Education relevant to the project
- Previous work experience relevant to the project
- Previous experience working with the County



D. Non-Competitive Procurements

Noncompetitive negotiations are permitted when the Purchasing Agent or designee determines that small purchases, formal bidding or requests for proposals are not appropriate or feasible. Non-competitive procurements are valued over \$5,000. If the purchase is over \$25,000, the purchase order must be provided to the County Council and is recorded in the minutes of the County Council meeting for inspection by the public.

1. Sole Source or Brand Name Purchases

Purchases for commodities that are only available from one known source or brand name products that can only be obtained from the manufacturer are not competitively bid.

2. Emergency Purchases

Emergency procurements are utilized when the Purchasing Division is not open for business and the needed commodity or contractual service is required to restore operation of a service or to eliminate a dangerous condition. When possible, the commodity or purchase should be procured through competitive telephone bids and awarded to the lowest responsive and responsible bidder.

V. Minority and Women-owned Business Enterprise Program

A. Background

The County's commitment to creating a level playing field for minority and women-owned business enterprises (MWBEs) predates the 1989 landmark Supreme Court decision that described the standards for local and state governments' race- and gender-conscious remedial measures.¹⁸⁶ Since enacting its first MWBE Program in 1983, the County administrators have issued four additional executive orders enacting and revising its MWBE Program.

County Executive Donald P. Hutchinson signed Executive Order, *Utilization of Minority Business Enterprise and Female Contractors in County Projects* in July 1983. The 1983 Executive Order established a ten percent contracting goal for minority businesses and a two percent goal for woman-owned businesses for construction projects valued over \$100,000. Minority business owners were defined as Black, Hispanic, Asian American, American Indian, Alaskan Native, and American Aleuts. Women business enterprises were defined as female, regardless of race or ethnicity.

County Executive Hutchison also signed an Executive Order on September 26, 1984 entitled, *Minority Business and Female Participation Program*. The 1984 Executive Order extended the County's MWBE goals to the purchase of goods and services. The County committed a total spend of \$750,000 with MWBEs annually on the purchase of equipment, supplies, or services.



¹⁸⁶ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495-96 (1989).

On March 5, 2004 County Executive James T. Smith, Jr. signed an Executive Order entitled, *Utilization of Minority Business Enterprises and Women's Business Enterprises in County Contracts*. In the 2004 Executive Order, minority business owners were defined as African American, Hispanic American, Asian American, and Native American. A minimum MWBE goal of 12% was established on all County contracts. The Office of Purchasing and Disbursements and the Office of Construction Contracts Administration were charged with the responsibility of ensuring that MWBEs have the maximum opportunity to participate on County contracts. MWBE participation was counted on contracts awarded by the Office of Construction Contracts Administration with MWBEs certified either by the Maryland Department of Transportation or the Baltimore County's Minority Business Program.

County Executive Smith signed Executive Order, *Use of Minority Business Enterprises and Women's Business Enterprises in County Contracts* on June 4, 2009. The Executive Order increased the MWBE goal to 15% on all procurements, including construction, architecture and engineering, goods and services, consultant contracts, and other professional service agreements. The 2009 Executive Order created the Procurement Review Group that was charged with adopting rules of procedures to 1) evaluate and determine MWBE goals for solicitations, 2) evaluate requests for waivers, and 3) clarify the definition of discretionary dollars. MWBE participation on public works projects was counted either at the subcontract or prime contract level. Eligible MWBEs were required to be certified by the Maryland Department of Transportation or the Baltimore County's Minority Business Office. Contracts awarded by the Office of Budget and Finance accepted self-certification as an MWBE under oath or with the certification certificate from another jurisdiction.

The current MWBE Executive Order was signed by County Executive Kevin Kamenetz on July 27, 2017. The 15% annual MWBE goal remained unchanged. Responsibility for ensuring County departments comply with the procedures and provisions set forth in the 2017 Executive Order was delegated to the Minority Business Enterprise Office within the Office of Budget and Finance.

B. MWBE Office

The Minority and Women Business Enterprise Office was created under the 2004 Executive Order to manage the operation of the MWBE Program. The MWBE Office is charged with the following responsibilities:

- Assist County agencies with identifying certified MWBEs to provide services, equipment, materials, and supplies
- Attend pre-bid meeting and bid openings to provide information to potential bidders and successful bidders about the County's MWBE program policies and requirements, when feasible
- Review MWBE participation plans to determine whether or not the goals were achieved
- Provide outreach services to minority and woman-owned businesses
- Submit MWBE utilization reports to the County Executive and County Council



The County also created a Minority Business Enterprise Commission that serves as an advisory to the Baltimore County Executive to increase contracting opportunities for MWBEs and disabled-owned business enterprises. The Commission has the responsibility to examine the County's procurement procedures to identify barriers to MWBE participation; conduct surveys pertaining to the County procurement policies concerning MWBE, and disabled-owned business utilization; recommend changes to existing procurement rules and propose new legislation, if appropriate; provide dispute resolution services; review proposed revisions to the MWBE program and provide recommendations; and sponsor MWBE-focused workshops and seminars.

1. MWBE Certification Requirements

The County does not process MWBE certifications. The County accepts MWBE certifications from the Maryland Department of Transportation and Baltimore City. Only MWBEs certified from one of these agencies are counted toward the County's MWBE goals with the exception of an MBE or WBE prime that wishes to meet up to 50% of the goal using its own workforce.¹⁸⁷

2. MWBE Goal

The County has established an overall 15% MWBE goal on for the participation of MWBEs on the County's contracts.

3. MWBE Directory

The MWBE Office maintains an MWBE directory of firms certified by the Maryland Department of Transportation's Minority Business Enterprise Office and the City of Baltimore's Minority Business Enterprise Office. Additionally, the MWBE directory includes contractors that have or had active contracts with Baltimore County that were responsible for reporting their subcontractor payments.

4. MWBE Outreach

The MWBE Office hosts and promotes informational workshops and seminars to assist MWBEs and other small businesses identify County contract opportunities. The workshops and seminars inform participants on gaining an understanding of the County's purchasing process and participants are afforded the opportunity to meet County buyers and ask questions.

5. MWBE Compliance

The MWBE Office manages a robust MWBE compliance process. Contractors and subcontractors are required to complete compliance forms including the MBE/WBE Participation Schedule and Attachment 1, Cost Summary Format to ensure MWBE participation is monitored and tracked pursuant to the program requirements.



¹⁸⁷ <http://resources.baltimorecountymd.gov/Documents/Fair%20Practices/wbembeexecutiveorder.pdf>.

Prime contractors are required to report payments to their MWBE subcontractors using the MBE and WBE Compliance Portal. Subcontractors must verify and acknowledge receipt of payments from prime contractors in the MBE and WBE Compliance Portal.

C. *Small Business Purchasing Program*

The County's Small Business Purchasing Program (SBPP) is a race- and gender-neutral tool to ensure that all segments of its business community have access to participate in County contracts. The SBPP is specifically designed to create contracting opportunities for small businesses.

1. Certification

The County does not certify businesses for participation in the Small Business Purchasing Program. For participation in the SBPP, the County accepts certifications from the following agencies:

- Small Business Administration
 - 8(a) Business Development program
 - Women-owned Small Business program
 - Historically Underutilized Business Zone program
- Veteran Administration Small and Veteran Business Programs
 - Service-Disabled Veteran-Owned Small Business program
 - Veteran-Owned Small Business program
 - Small and Disadvantaged Business Program
- Maryland Small Business Reserve
- Maryland Department of Transportation Office of Minority Business
 - SBE
 - Disadvantaged Business Enterprise
 - MBE
 - Airport Concessions Disadvantaged Business Enterprise

2. Contracting Initiatives

The County's tiered contracting process was designed to create prime contracting opportunities for small businesses in the award of professional services and construction contracts. Minimally, the construction trades included in the initiative are electrical, plumbing, carpentry, masonry, painting, HVAC, and roofing. The tiered contracting opportunities are described in the table below.

Construction Trades Tiered Contracting	
Tier 1	On-call contracts valued up to \$24,999.99 per project or a five-year term contract with a value not to exceed \$500,000 over the contract duration
	No bonding requirement
	No MBE or WBE subcontracting goals



Construction Trades Tiered Contracting	
Tier 2	On-call trades contracts valued at \$25,000 to \$250,000 per project
Tier 3	Design build valued up to \$5 million dollars per project
Tier 4	Design bid build contracts value exceeding \$5 million dollars per project
Tier 5	DPW construction projects must complete the DPW Prequalification Process

Contractors are not required to be prequalified for Tiers 1 through 4. The Procurement Review Group and the user agency will determine the professional services contracts for inclusion in the program prior to project advertisement. If the solicitation includes both Tier 1 and Tier 2 services in excess of \$500,000, contractors can only respond to one tier.



CHAPTER 3: Prime Contractor Utilization Analysis

I. Introduction

This chapter documents Baltimore County's utilization of Minority and Woman Business Enterprise (MWBE) and non-minority male-owned business enterprise (non-Minority males) prime contractors by ethnicity, gender, and industry during the July 1, 2012 to June 30, 2017 study period. The Baltimore County (County) contracts examined were classified into four industries—construction, architecture and engineering services, professional services, and goods and services.

- **Construction:** public works projects, including construction, alteration, repair, or improvement other than ordinary maintenance.
- **Architecture and Engineering Services:** program management, construction management, feasibility studies, preliminary architectural and engineering, design, surveying, mapping, and services requiring performance by a registered or licensed architect or engineer.
- **Professional Services:** advisory services that must be performed by licensed consultants or by persons possessing unique or special training, education, or skills.
- **Goods and Services:** labor, maintenance services, or a combination of services and supplies that support public works projects.

Table 3.1 lists the six race and gender groups in which the businesses are divided, along with the classification of the two ethnic and gender groups.



Table 3.1: Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African Americans	Businesses owned by male and female African Americans
Asian Americans	Businesses owned by male and female Asian Americans
Hispanic Americans	Businesses owned by male and female Hispanic Americans
Native Americans	Businesses owned by male and female Native Americans
Caucasian Females	Businesses owned by Caucasian females
Non-minority Males	Businesses owned by non-minority males, and businesses that could not be identified as minority or Caucasian female-owned
Minority Business Enterprises	Businesses owned by male and female African Americans, Asian Americans, Hispanic Americans, and Native Americans
Woman Business Enterprises	Businesses owned by females

II. Prime Contract Data Sources

The prime contract data consist of contract records extracted from the County’s financial system. The purchase orders were issued during the July 1, 2012 to June 30, 2017 study period. The County’s prime contract data were normalized to conform to a consistent standard and combined to create a single prime contract dataset. Prime contracts were analyzed by project number or reference number.

The dataset was scrubbed to remove duplicates and prime contracts awarded outside the study period. To assign industry, the records received from the County were analyzed by master agreement name, vendor name, commodity code, or document description. Each prime contract was classified into one of the four industries—construction, architecture and engineering services, professional services, or goods and services. Excluded from the disparity study analysis were prime contracts awarded to not-for-profit entities, state and other local government entities, utility companies, and claims/reimbursements.¹⁸⁸ The methodology for assigning industry classifications was approved by the County.

¹⁸⁸ Full list of EXCLUSIONS: \$0.00 payments, duplicate contracts, educational institutions and services, financial institutions, investment companies, insurance, payroll service, food purveyors, hotels, individuals, reimbursements, judgments, mail/courier services, manufacturers, media (radio, tv, newspaper), medical/healthcare/rehabilitation/custodial care, megastores, new contracts pending council approval, non-profits, not found, online, out for re-bid, periodical subscription memberships, personal services, public utilities and fuel, publishing, purchase order was cancelled, purchase order was closed (no payments were made), real estate, recreation, redevelopment/residential, staffing/employment, telecommunication, transportation/travel related, vehicle dealerships.



A number of steps were taken to determine the ethnicity and gender of each prime contractor. The initial step determined whether the contractor was certified by the County or another certifying agency. Where available, the ethnicity and gender of the certified firms were derived from the certification records. Additional sources were used to determine the ethnicity and gender of non-certified contractors, including chamber of commerce directories, trade organization membership lists, internet research, and contractor surveys. Next, Internet research was conducted to examine the company's website, social media, digital media, and business listings to determine the business owner's ethnicity and gender. Lastly, the contractor survey solicited ethnicity and gender information directly from the businesses. Prime contractors whose ethnicity and gender could not be verified as minority or female-owned were classified as non-MWBE. The non-MWBE category also included publicly traded corporations, employee-owned businesses, and 50/50 partnerships in which the partners were neither a minority nor a woman.¹⁸⁹

III. Thresholds for Analysis

The County's prime contracts awarded in each industry are analyzed at three size thresholds: (1) all prime contracts; (2) informal prime contracts, as defined by the Office of Budget and Finance's Purchasing Manual; and (3) formal prime contracts, with the upper limits determined by a statistical calculation. While formal prime contracts are defined by the Office of Budget and Finance's Purchasing Manual, an upper limit was set for each industry to exclude outliers. The methodology for defining the upper limits of the formal size threshold for each industry is detailed below.

A. Informal Thresholds

There are three thresholds for analysis of the County's informal prime contracts—one for each industry, except for architecture and engineering services.¹⁹⁰ The informal threshold for each industry is shown in Table 3.2.

Table 3.2: Informal Contract Threshold by Industry

Industry	Informal Contract Threshold
Construction	\$25,000 and under
Architecture and Engineering Services	No informal threshold
Professional Services	\$25,000 and under
Goods and Services	\$25,000 and under

¹⁸⁹ See *Section II: Prime Contract Data Sources* for the methodology employed to identify the ethnicity and gender of the County's utilized prime contractors.

¹⁹⁰ Purchasing Manual. Office of Budget and Finance. Section 8-1.



B. Formal Thresholds

The lower threshold for formal contracts, as defined in the Office of Budget and Finance's Purchasing Manual, is over \$25,000 for construction, professional services, and goods and services. To ensure the reliability of the Study's statistical findings, a distribution analysis of the formal prime contracts was undertaken. This analysis revealed the skewness of the data, which was caused by the extreme outliers in the prime contract dataset that would overestimate the central tendency of the dataset. In other words, very large prime contracts heavily skew the average value of the contracts and therefore must be removed. The 1.5 x IQR rule was applied in the formal threshold analysis to determine which contracts are outliers.

In this method, the value of the contract at the first quartile and the value of the contract at the third quartile must be identified to determine the upper boundaries. The distance, or the difference in value, between the first and third quartile is then calculated and designated as the interquartile range. The interquartile range must then be multiplied by 1.5. The value of 1.5 x IQR is subtracted from the first quartile to identify the lower bound for accepted contract values. The value of 1.5 x IQR is added to the third quartile to identify the upper bound of accepted contract values. Any contract whose value is outside of this range is designated as an outlier and is excluded from the analysis.

Given the distribution of prime contracts in the County's prime contract dataset, the lower bound shows that all small contracts should be included. Thus, no small contracts are eliminated as outliers. After excluding large contracts, the formal thresholds were determined to be contracts valued over \$25,000 and less than \$5,690,000 for construction, less than \$3,810,000 for architecture and engineering services, over \$25,000 and less than \$1,030,000 for professional services, and over \$25,000 and less than \$620,000 for goods and services. During the process of determining the upper bound, very large contracts were found that existed outside the upper bound and were thus excluded as outliers.

The formal prime contracts analyzed in this chapter are based on the prime contracts that fall within the upper bound, determined by applying the 1.5 x IQR rule and the lower bound, determined by limits stated in the Purchasing Manual. Table 3.3 shows the upper and lower bounds for the County's formal prime contracts in each of the four industries.



Table 3.3: Formal Contract Threshold by Industry

Industry	Formal Contract Threshold
Construction	Over \$25,000 and less than \$5,690,000
Architecture and Engineering Services	Less than \$3,810,000
Professional Services	Over \$25,000 and less than \$1,030,000
Goods and Services	Over \$25,000 and less than \$620,000

IV. Prime Contractor Utilization

A. All Prime Contractors

As shown in Table 3.4, the County issued 3,633 prime contracts during the July 1, 2012 to June 30, 2017 study period. These prime contracts include outliers; therefore, the presentation of all contracts is for illustrative purposes only.

The 3,633 total number of prime contracts included 477 for construction, 188 for architecture and engineering services, 320 for professional services, and 2,648 for goods and services. The payments made by the County during the study period totaled \$1,650,341,560 for all 3,633 prime contracts. Payments included \$849,709,797 for construction, \$282,587,338 for architecture and engineering services, \$71,618,625 for professional services, and \$446,425,800 for goods and services.

**Table 3.4: Total Prime Contracts and Dollars Expended:
All Industries, July 1, 2012 to June 30, 2017**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	477	\$849,709,797
Architecture and Engineering Services	188	\$282,587,338
Professional Services	320	\$71,618,625
Goods and Services	2,648	\$446,425,800
Total Expenditures	3,633	\$1,650,341,560



B. Highly Used Construction Prime Contractors

The County awarded a total of 477 construction contracts during the study period. As shown in Table 3.5, the County's 477 construction prime contracts were awarded to 159 unique businesses.

Table 3.5: Construction Prime Contracts

Total Prime Contracts	477
Total Utilized Businesses	159
Total Expenditures	\$849,709,797

Table 3.6 shows the distribution of the County's construction prime contracts by the number of businesses. Twenty of the 159 businesses received \$590,630,352, or 70% of the total construction prime contract dollars. The findings show that a small group of prime contractors received the majority of construction prime contract dollars awarded by the County.

**Table 3.6: Construction Prime Contracts
Distributed by Number of Vendors**

Vendors	Total Dollars	Percent of Dollars ¹⁹¹	Number of Contracts	Percent of Contracts ¹⁹²
20 Vendors Received	\$590,630,352	70%	132	28%
139 Vendors Received	\$259,079,445	30%	345	72%
159 Vendors Received	\$849,709,797	100%	477	100%

Table 3.7 shows the ethnicity and gender of the most highly used construction prime contractors who received approximately 50% of the construction prime contract dollars. The most highly used prime contractors were Hispanic Americans and non-minority males. The contracts received by these 10 businesses ranged from \$18,749 to \$76,806,996.

Table 3.7: Top 10 Highly Used Construction Prime Contractors

Ethnicity/ Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Hispanic Americans	\$48,589,796	5.72%	17	3.56%
Non-minority Males	\$375,609,162	44.20%	64	13.42%



¹⁹¹ Percentages are rounded to the nearest whole number.

¹⁹² Percentages are rounded to the nearest whole number.

C. Highly Used Architecture and Engineering Services Prime Contractors

The County awarded a total of 188 architecture and engineering services contracts during the study period. As shown in Table 3.8, the County's 188 architecture and engineering services prime contracts were received by 77 unique businesses.

Table 3.8: Architecture and Engineering Services Prime Contracts

Total Prime Contracts	188
Total Utilized Businesses	77
Total Expenditures	\$282,587,338

Table 3.9 shows the distribution of the County's architecture and engineering services prime contracts by the number of businesses. Fifteen of the 77 businesses received \$200,206,140, or 71% of the total architecture and engineering services prime contract dollars. The findings show that a small group of prime contractors received the majority of architecture and engineering services prime contract dollars spent by the County.

Table 3.9: Architecture and Engineering Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars¹⁹³	Number of Contracts	Percent of Contracts¹⁹⁴
15 Highly Used Businesses	\$200,206,140	71%	77	41%
62 Businesses	\$82,381,198	29%	111	59%
77 Total Businesses	\$282,587,338	100%	188	100%

Table 3.10 shows the ethnicity and gender of the most highly used architecture and engineering services prime contractors, who received approximately 50% of architecture and engineering services prime contract dollars. The seven most highly used prime contractors were non-minority males. The contracts received by these seven businesses ranged from \$4,546 to \$21,686,794.

Table 3.10: Top Seven Highly Used Architecture and Engineering Services Prime Contractors

Ethnicity/ Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-minority Males	\$144,800,478	51.24%	50	26.60%



¹⁹³ Percentages are rounded to the nearest whole number.

¹⁹⁴ Percentages are rounded to the nearest whole number.

D. Highly Used Professional Services Prime Contractors

The County awarded a total of 320 professional services contracts during the study period. As shown in Table 3.11, the County's 320 professional services prime contracts were received by 169 unique businesses.

Table 3.11: Professional Services Prime Contracts

Total Prime Contracts	320
Total Utilized Businesses	169
Total Expenditures	\$71,618,625

Table 3.12 shows the distribution of the County's professional services prime contracts by the number of businesses. Nineteen of the 169 businesses received \$50,272,319, or 70% of the total professional services prime contract dollars. The findings show that a small group of prime contractors received the majority of professional services prime contract dollars spent by the County.

**Table 3.12: Professional Services Prime Contracts
Distributed by Number of Businesses**

Businesses	Total Dollars	Percent of Dollars¹⁹⁵	Number of Contracts	Percent of Contracts¹⁹⁶
19 Highly Used Businesses	\$50,272,319	70%	46	14%
150 Businesses	\$21,346,306	30%	274	86%
169 Total Businesses	\$71,618,625	100%	320	100%

Table 3.13 shows the ethnicity and gender of the most highly used professional services prime contractors, who received approximately 50% of the professional services prime contract dollars. The eight most highly used prime contractors were Caucasian females and non-minority males. The contracts received by these eight businesses ranged from \$1,374,708 to \$7,998,126.

Table 3.13: Top Eight Highly Used Professional Services Prime Contractors

Ethnicity/ Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Caucasian Females	\$1,912,524	2.67%	1	0.31%
Non-minority Males	\$34,058,415	47.56%	19	5.94%



¹⁹⁵ Percentages are rounded to the nearest whole number.

¹⁹⁶ Percentages are rounded to the nearest whole number.

E. Highly Used Goods and Services Prime Contractors

The County awarded a total of 2,648 goods and services contracts during the study period. As shown in Table 3.14, the County's 2,648 goods and services prime contracts were received by 855 unique businesses.

Table 3.14: Goods and Services Prime Contracts

Total Prime Contracts	2,648
Total Utilized Businesses	855
Total Expenditures	\$446,425,800

Table 3.15 shows the distribution of the County's goods and services prime contracts by the number of businesses. Sixty-seven of the 855 businesses received \$312,708,688, or 70% of the total goods and services prime contract dollars. The findings show that a small group of prime contractors received the majority of goods and services prime contract dollars spent by the County.

**Table 3.15: Goods and Services Prime Contracts
Distributed by Number of Businesses**

Businesses	Total Dollars	Percent of Dollars¹⁹⁷	Number of Contracts	Percent of Contracts¹⁹⁸
67 Highly Used Businesses	\$312,708,688	70%	394	15%
788 Businesses	\$133,717,112	30%	2,254	85%
855 Total Businesses	\$446,425,800	100%	2,648	100%

Table 3.16 presents the ethnicity and gender of the most highly used goods and services prime contractors, who received approximately 50% of the goods and services prime contract dollars. The 28 most highly used prime contractors were Caucasian females and non-minority males. The contracts received by these 28 businesses ranged from \$1,065 to \$16,616,631.

Table 3.16: Top 28 Highly Used Goods and Services Prime Contractors

Ethnicity/ Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Caucasian Females	\$12,197,585	2.73%	2	0.08%
Non-minority Males	\$210,479,632	47.15%	167	6.31%



¹⁹⁷ Percentages are rounded to the nearest whole number.

¹⁹⁸ Percentages are rounded to the nearest whole number.

F. All Prime Contracts by Industry

1. Construction Prime Contract Utilization: All Contracts

Table 3.17 summarizes all prime contract dollars expended by the County on construction prime contracts. Minority Business Enterprises (MBEs) received 8.80% of the construction prime contract dollars; Woman Business Enterprises (WBEs) received 3.00%; and non-minority male-owned businesses (non-MWBEs) received 89.85%.

African Americans received 10, or 2.10% of all construction prime contracts awarded during the study period, representing \$8,108,053, or 0.95% of the construction prime contract dollars.

Asian Americans received 6, or 1.26% of all construction prime contracts awarded during the study period, representing \$11,410,919, or 1.34% of the construction prime contract dollars.

Hispanic Americans received 41, or 8.60% of all construction prime contracts awarded during the study period, representing \$55,269,796, or 6.50% of the construction prime contract dollars.

Native Americans received no construction prime contracts during the study period.

Caucasian Females received 43, or 9.01% of all construction prime contracts awarded during the study period, representing \$11,477,135, or 1.35% of the construction prime contract dollars.

Non-minority Males received 377, or 79.04% of all construction prime contracts awarded during the study period, representing \$763,443,894, or 89.85% of the construction prime contract dollars.

Minority Business Enterprises received 57, or 11.95% of all construction prime contracts awarded during the study period, representing \$74,788,769, or 8.80% of the construction prime contract dollars.

Woman Business Enterprises received 57, or 11.95%, of all construction prime contracts awarded during the study period, representing \$25,533,023, or 3.00%, of the construction prime contract dollars.



**Table 3.17: Construction Prime Contract Utilization:
All Contracts, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	10	2.10%	\$8,108,053	0.95%
Asian Americans	6	1.26%	\$11,410,919	1.34%
Hispanic Americans	41	8.60%	\$55,269,796	6.50%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	43	9.01%	\$11,477,135	1.35%
Non-minority Males	377	79.04%	\$763,443,894	89.85%
TOTAL	477	100.00%	\$849,709,797	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	10	2.10%	\$8,108,053	0.95%
Asian American Females	6	1.26%	\$11,410,919	1.34%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	8	1.68%	\$2,644,969	0.31%
Hispanic American Males	33	6.92%	\$52,624,828	6.19%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	43	9.01%	\$11,477,135	1.35%
Non-minority Males	377	79.04%	\$763,443,894	89.85%
TOTAL	477	100.00%	\$849,709,797	100.00%
	<i>Mason Tillman Associates, Ltd., March 2017</i>			
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	57	11.95%	\$74,788,769	8.80%
Woman Business Enterprises	57	11.95%	\$25,533,023	3.00%

2. Architecture and Engineering Services Prime Contract Utilization: All Contracts

Table 3.18 summarizes all prime contract dollars expended by the County on architecture and engineering services prime contracts. MBEs received 5.04% of the architecture and engineering services prime contract dollars; WBEs received 0.31%; and non-MWBEs received 94.65%.

African Americans received 3, or 1.60% of all architecture and engineering services prime contracts awarded during the study period, representing \$7,185,848, or 2.54% of the architecture and engineering services prime contract dollars.

Asian Americans received 4, or 2.13% of all architecture and engineering services prime contracts awarded during the study period, representing \$7,064,408, or 2.50% of the architecture and engineering services prime contract dollars.

Hispanic Americans received no architecture and engineering services prime contracts during the study period.

Native Americans received no architecture and engineering services prime contracts during the study period.

Caucasian Females received 7, or 3.72% of all architecture and engineering services prime contracts awarded during the study period, representing \$862,101, or 0.31% of the architecture and engineering services prime contract dollars.

Non-minority Males received 174, or 92.55% of all architecture and engineering services prime contracts awarded during the study period, representing \$267,474,981, or 94.65% of the architecture and engineering services prime contract dollars.

Minority Business Enterprises received 7, or 3.72% of all architecture and engineering services prime contracts awarded during the study period, representing \$14,250,256, or 5.04% of the architecture and engineering services prime contract dollars.

Woman Business Enterprises received 7, or 3.72%, of all architecture and engineering services prime contracts awarded during the study period, representing \$862,101, or 0.31%, of the architecture and engineering services prime contract dollars.



**Table 3.18: Architecture and Engineering Services Prime Contract Utilization:
All Contracts, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	3	1.60%	\$7,185,848	2.54%
Asian Americans	4	2.13%	\$7,064,408	2.50%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	3.72%	\$862,101	0.31%
Non-minority Males	174	92.55%	\$267,474,981	94.65%
TOTAL	188	100.00%	\$282,587,338	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	3	1.60%	\$7,185,848	2.54%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	4	2.13%	\$7,064,408	2.50%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	7	3.72%	\$862,101	0.31%
Non-minority Males	174	92.55%	\$267,474,981	94.65%
TOTAL	188	100.00%	\$282,587,338	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	7	3.72%	\$14,250,256	5.04%
Woman Business Enterprises	7	3.72%	\$862,101	0.31%

3. Professional Services Prime Contract Utilization: All Contracts

Table 3.19 summarizes all contract dollars expended by the County on professional services prime contracts. MBEs received 6.32% of the professional services prime contract dollars; WBEs received 6.74%; and non-MWBEs received 89.51%.

African Americans received 7, or 2.19% of all professional services prime contracts awarded during the study period, representing \$1,520,495, or 2.12%, of the professional services prime contract dollars.

Asian Americans received 12, or 3.75% of all professional services prime contracts awarded during the study period, representing \$3,004,241, or 4.19% of the professional services prime contract dollars.

Hispanic Americans received no professional services prime contracts during the study period.

Native Americans received no professional services prime contracts during the study period.

Caucasian Females received 5, or 1.56% of all professional services prime contracts awarded during the study period, representing \$2,987,985, or 4.17% of the professional services prime contract dollars.

Non-minority Males received 296, or 92.50% of all professional services prime contracts awarded during the study period, representing \$64,105,903, or 89.51% of the professional services prime contract dollars.

Minority Business Enterprises received 19, or 5.94% of all professional services prime contracts awarded during the study period, representing \$4,524,736, 6.32% of the professional services prime contract dollars.

Woman Business Enterprises received 12, or 3.75%, of all professional services prime contracts awarded during the study period, representing \$4,828,777, or 6.74%, of the professional services prime contract dollars.



**Table 3.19: Professional Services Prime Contract Utilization:
All Contracts, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	2.19%	\$1,520,495	2.12%
Asian Americans	12	3.75%	\$3,004,241	4.19%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	1.56%	\$2,987,985	4.17%
Non-minority Males	296	92.50%	\$64,105,903	89.51%
TOTAL	320	100.00%	\$71,618,625	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	3	0.94%	\$567,859	0.79%
African American Males	4	1.25%	\$952,637	1.33%
Asian American Females	4	1.25%	\$1,272,933	1.78%
Asian American Males	8	2.50%	\$1,731,308	2.42%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	5	1.56%	\$2,987,985	4.17%
Non-minority Males	296	92.50%	\$64,105,903	89.51%
TOTAL	320	100.00%	\$71,618,625	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	19	5.94%	\$4,524,736	6.32%
Woman Business Enterprises	12	3.75%	\$4,828,777	6.74%

4. Goods and Services Prime Contract Utilization: All Contracts

Table 3.20 summarizes all contract dollars expended by the County on goods and services prime contracts. MBEs received 2.56% of the goods and services prime contract dollars; WBEs received 6.61%; and non-MWBEs received 91.05%.

African Americans received 35, or 1.32% of all goods and services prime contracts awarded during the study period, representing \$4,406,372, or 0.99% of the goods and services prime contract dollars.

Asian Americans received 31, or 1.17% of all goods and services prime contracts awarded during the study period, representing \$3,888,850, or 0.87% of the goods and services prime contract dollars.

Hispanic Americans received 8, or 0.30% of all goods and services prime contracts awarded during the study period, representing \$3,144,587, or 0.70% of the goods and services prime contract dollars.

Native Americans received no goods and services prime contracts during the study period.

Caucasian Females received 194, or 7.33% of all goods and services prime contracts awarded during the study period, representing \$28,517,493, or 6.39% of the goods and services prime contract dollars.

Non-minority Males received 2,380, or 89.88% of all goods and services prime contracts awarded during the study period, representing \$406,468,498, or 91.05% of goods and services prime contract dollars.

Minority Business Enterprises received 74, or 2.79% of all goods and services prime contracts awarded during the study period, representing \$11,439,809, or 2.56%, of the goods and services prime contract dollars.

Woman Business Enterprises received 207, or 7.82% of all goods and services prime contracts awarded during the study period, representing \$29,508,134, or 6.61% of the goods and services prime contract dollars.



**Table 3.20: Goods and Services Prime Contract Utilization:
All Contracts, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	35	1.32%	\$4,406,372	0.99%
Asian Americans	31	1.17%	\$3,888,850	0.87%
Hispanic Americans	8	0.30%	\$3,144,587	0.70%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	194	7.33%	\$28,517,493	6.39%
Non-minority Males	2,380	89.88%	\$406,468,498	91.05%
TOTAL	2,648	100.00%	\$446,425,800	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	10	0.38%	\$942,873	0.21%
African American Males	25	0.94%	\$3,463,499	0.78%
Asian American Females	3	0.11%	\$47,769	0.01%
Asian American Males	28	1.06%	\$3,841,081	0.86%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	8	0.30%	\$3,144,587	0.70%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	194	7.33%	\$28,517,493	6.39%
Non-minority Males	2,380	89.88%	\$406,468,498	91.05%
TOTAL	2,648	100.00%	\$446,425,800	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	74	2.79%	\$11,439,809	2.56%
Woman Business Enterprises	207	7.82%	\$29,508,134	6.61%

G. Informal Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued at \$25,000 and Less

Table 3.21 summarizes all contract dollars expended by the County on construction prime contracts valued at \$25,000 and less. MBEs received 3.68% of the construction prime contract dollars; WBEs received 6.89%; and non-MWBEs received 89.92%.

African Americans received 1, or 0.77% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$19,820, or 1.92% of the construction prime contract dollars.

Asian Americans received no construction prime contracts valued at \$25,000 and less during the study period.

Hispanic Americans received 4, or 3.08% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$18,155, or 1.76% of the construction prime contract dollars.

Native Americans received no construction prime contracts valued at \$25,000 and less during the study period.

Caucasian Females received 22, or 16.92% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$65,978, or 6.40% of the construction prime contract dollars.

Non-minority Males received 103, or 79.23% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$926,983, or 89.92% of the construction prime contract dollars.

Minority Business Enterprises received 5, or 3.85% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$37,975, or 3.68% of the construction prime contract dollars.

Minority Business Enterprises received 23, or 17.69% of the construction prime contracts valued at \$25,000 and less awarded during the study period, representing \$70,983, or 6.89% of the construction prime contract dollars.



**Table 3.21: Construction Prime Contract Utilization:
Contracts Valued at \$25,000 and Less, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	0.77%	\$19,820	1.92%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	4	3.08%	\$18,155	1.76%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	22	16.92%	\$65,978	6.40%
Non-minority Males	103	79.23%	\$926,983	89.92%
TOTAL	130	100.00%	\$1,030,936	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	0.77%	\$19,820	1.92%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	1	0.77%	\$5,006	0.49%
Hispanic American Males	3	2.31%	\$13,150	1.28%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	22	16.92%	\$65,978	6.40%
Non-minority Males	103	79.23%	\$926,983	89.92%
TOTAL	130	100.00%	\$1,030,936	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	5	3.85%	\$37,975	3.68%
Woman Business Enterprises	23	17.69%	\$70,983	6.89%

2. Professional Services Prime Contract Utilization: Contracts Valued at \$25,000 and Less

Table 3.22 summarizes all contract dollars expended by the County on professional services prime contracts valued at \$25,000 and less. MBEs received 5.17% of the professional services prime contract dollars; WBEs received 1.60%; and non-MWBEs received 94.83%.

African Americans received 1, or 0.55% of the professional services prime contracts valued at \$25,000 and less awarded during the study period, representing \$90, or 0.01% of the professional services prime contract dollars.

Asian Americans received 7, or 3.87% of the professional services prime contracts valued at \$25,000 and less awarded during the study period, representing \$76,584, or 5.17% of the professional services prime contract dollars.

Hispanic Americans received no professional services prime contracts valued at \$25,000 and less during the study period.

Native Americans received no professional services prime contracts valued at \$25,000 and less during the study period.

Caucasian Females received no professional services prime contracts valued at \$25,000 and less during the study period.

Non-minority Males received 173, or 95.58% of the professional services prime contracts valued at \$25,000 and less awarded during the study period, representing \$1,405,245, or 94.83% of the professional services prime contract dollars.

Minority Business Enterprises received 8, or 4.42% of the professional services prime contracts valued at \$25,000 and less awarded during the study period, representing \$76,674, or 5.17% of the professional services prime contract dollars.

Woman Business Enterprises received 4, or 2.21% of the professional services prime contracts valued at \$25,000 and less awarded during the study period, representing \$23,699, or 1.60% of the professional services prime contract dollars.



**Table 3.22: Professional Services Prime Contract Utilization:
Contracts Valued at \$25,000 and Less, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	0.55%	\$90	0.01%
Asian Americans	7	3.87%	\$76,584	5.17%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	173	95.58%	\$1,405,245	94.83%
TOTAL	181	100.00%	\$1,481,919	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.55%	\$90	0.01%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	3	1.66%	\$23,609	1.59%
Asian American Males	4	2.21%	\$52,975	3.57%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	173	95.58%	\$1,405,245	94.83%
TOTAL	181	100.00%	\$1,481,919	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	8	4.42%	\$76,674	5.17%
Woman Business Enterprises	4	2.21%	\$23,699	1.60%

3. Goods and Services Prime Contract Utilization: Contracts Valued at \$25,000 and Less

Table 3.23 summarizes all contract dollars expended by the County on goods and services prime contracts valued at \$25,000 and less. MBEs received 3.43% of the goods and services prime contract dollars; WBEs received 7.26%; and non-MWBEs received 90.36%.

African Americans received 16, or 0.96% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$178,314, or 1.48% of the goods and services prime contract dollars.

Asian Americans received 20, or 1.20% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$210,610, or 1.74% of the goods and services prime contract dollars.

Hispanic Americans received 2, or 0.12% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$25,753, or 0.21% of the goods and services prime contract dollars.

Native Americans received no goods and services prime contracts valued at \$25,000 and less during the study period.

Caucasian Females received 128, or 7.68% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$750,329, or 6.21% of the goods and services prime contract dollars.

Non-minority Males received 1,501, or 90.04% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$10,922,075, or 90.36% of the goods and services prime contract dollars.

Minority Business Enterprises received 38, or 2.28% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$414,678, or 3.43% of the goods and services prime contract dollars.

Woman Business Enterprises received 137, or 8.22% of the goods and services prime contracts valued at \$25,000 and less awarded during the study period, representing \$877,846, or 7.26% of the goods and services prime contract dollars.



**Table 3.23: Goods and Services Prime Contract Utilization:
Contracts Valued at \$25,000 and Less, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	16	0.96%	\$178,314	1.48%
Asian Americans	20	1.20%	\$210,610	1.74%
Hispanic Americans	2	0.12%	\$25,753	0.21%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	128	7.68%	\$750,329	6.21%
Non-minority Males	1,501	90.04%	\$10,922,075	90.36%
TOTAL	1,667	100.00%	\$12,087,082	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	6	0.36%	\$79,748	0.66%
African American Males	10	0.60%	\$98,566	0.82%
Asian American Females	3	0.18%	\$47,769	0.40%
Asian American Males	17	1.02%	\$162,841	1.35%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	2	0.12%	\$25,753	0.21%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	128	7.68%	\$750,329	6.21%
Non-minority Males	1,501	90.04%	\$10,922,075	90.36%
TOTAL	1,667	100.00%	\$12,087,082	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	38	2.28%	\$414,678	3.43%
Woman Business Enterprises	137	8.22%	\$877,846	7.26%

H. Formal Prime Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued at over \$25,000 and Less than \$5,690,000

Table 3.24 summarizes all contract dollars expended by the County on construction prime contracts valued at over \$25,000 and less than \$5,690,000. MBEs received 12.51% of the construction prime contract dollars; WBEs received 7.04%; and non-MWBEs received 84.33%.

African Americans received 9, or 2.88% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$8,088,233, or 2.24% of the construction prime contract dollars.

Asian Americans received 6, or 1.92% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$11,410,919, or 3.16% of the construction prime contract dollars.

Hispanic Americans received 34, or 10.86% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$25,739,490, or 7.12% of the construction prime contract dollars.

Native Americans received no construction prime contracts valued at over \$25,000 and less than \$5,690,000 during the study period.

Caucasian Females received 21, or 6.71% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$11,411,157, or 3.16% of the construction prime contract dollars.

Non-minority Males received 243, or 77.64% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$304,937,132, or 84.33% of the construction prime contract dollars.

Minority Business Enterprises received 49, or 15.65% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$45,238,643, or 12.51% of the construction prime contract dollars.

Woman Business Enterprises received 34, or 10.86% of the construction prime contracts valued at over \$25,000 and less than \$5,690,000 awarded during the study period, representing \$25,462,040, or 7.04% of the construction prime contract dollars.



**Table 3.24: Construction Prime Contract Utilization:
Contracts Valued at over \$25,000 and Less than \$5,690,000, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	9	2.88%	\$8,088,233	2.24%
Asian Americans	6	1.92%	\$11,410,919	3.16%
Hispanic Americans	34	10.86%	\$25,739,490	7.12%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	21	6.71%	\$11,411,157	3.16%
Non-minority Males	243	77.64%	\$304,937,132	84.33%
TOTAL	313	100.00%	\$361,586,932	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	9	2.88%	\$8,088,233	2.24%
Asian American Females	6	1.92%	\$11,410,919	3.16%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	7	2.24%	\$2,639,963	0.73%
Hispanic American Males	27	8.63%	\$23,099,527	6.39%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	21	6.71%	\$11,411,157	3.16%
Non-minority Males	243	77.64%	\$304,937,132	84.33%
TOTAL	313	100.00%	\$361,586,932	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	49	15.65%	\$45,238,643	12.51%
Woman Business Enterprises	34	10.86%	\$25,462,040	7.04%

2. Architecture and Engineering Services Prime Contract Utilization: Contracts Valued at Less than \$3,810,000

Table 3.25 summarizes all contract dollars expended by the County on architecture and engineering services prime contracts valued at less than \$3,810,000. MBEs received 1.57% of all architecture and engineering services prime contract dollars; WBEs received 0.69%; and non-MWBEs received 97.74%.

African Americans received 2, or 1.22% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$1,905,168, or 1.52% of the architecture and engineering services prime contract dollars.

Asian Americans received 3, or 1.83% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$64,408, or 0.05% of the architecture and engineering services prime contract dollars.

Hispanic Americans received no architecture and engineering services prime contracts valued at less than \$3,810,000 during the study period.

Native Americans received no architecture and engineering services prime contracts valued at less than \$3,810,000 during the study period.

Caucasian Females received 7, or 4.27% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$862,101, or 0.69% of the architecture and engineering services prime contract dollars.

Non-minority Males received 152, or 92.68% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$122,658,763, or 97.74% of the architecture and engineering services prime contract dollars.

Minority Business Enterprises received 5, or 3.05% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$1,969,576, or 1.57% of the architecture and engineering services prime contract dollars.

Woman Business Enterprises received 7, or 4.27% of the architecture and engineering services prime contracts valued at less than \$3,810,000 awarded during the study period, representing \$862,101, or 0.69% of the architecture and engineering services prime contract dollars.



**Table 3.25: Architecture and Engineering Services Prime Contract Utilization:
Contracts Valued at Less than \$3,810,000, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	1.22%	\$1,905,168	1.52%
Asian Americans	3	1.83%	\$64,408	0.05%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	4.27%	\$862,101	0.69%
Non-minority Males	152	92.68%	\$122,658,763	97.74%
TOTAL	164	100.00%	\$125,490,440	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	2	1.22%	\$1,905,168	1.52%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	3	1.83%	\$64,408	0.05%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	7	4.27%	\$862,101	0.69%
Non-minority Males	152	92.68%	\$122,658,763	97.74%
TOTAL	164	100.00%	\$125,490,440	100.00%
	<i>Mason Tillman Associates, Ltd., March 2017</i>			
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	5	3.05%	\$1,969,576	1.57%
Woman Business Enterprises	7	4.27%	\$862,101	0.69%

3. Professional Services Prime Contract Utilization: Contracts Valued at over \$25,000 and Less than \$1,030,000

Table 3.26 summarizes all contract dollars expended by the County on professional services prime contracts valued at over \$25,000 and less than \$1,030,000. MBEs received 6.91% of the professional services prime contract dollars; WBEs received 6.15%; and non-MWBEs received 89.07%.

African Americans received 6, or 4.88% of the professional services prime contracts valued at over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$1,520,405, or 5.69% of the professional services prime contract dollars.

Asian Americans received 3, or 2.44% of the professional services prime contracts valued over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$326,558, or 1.22% of the professional services prime contract dollars.

Hispanic Americans received no professional services prime contracts valued at over \$25,000 and less than \$1,030,000 during the study period.

Native Americans received no professional services prime contracts valued at over \$25,000 and less than \$1,030,000 during the study period.

Caucasian Females received 4, or 3.25% of the professional services prime contracts valued at over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$1,075,461, or 4.02% of the professional services prime contract dollars.

Non-minority Males received 110, or 89.43% of the professional services prime contracts valued at over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$23,816,485, or 89.07% of the professional services prime contract dollars.

Minority Business Enterprises received 9, or 7.32% of the professional services prime contracts valued at over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$1,846,964, or 6.91% of the professional services prime contract dollars.

Woman Business Enterprises received 6, or 4.88% of the professional services prime contracts valued at over \$25,000 and less than \$1,030,000 awarded during the study period, representing \$1,643,230, or 6.15% of the professional services prime contract dollars.



**Table 3.26: Professional Services Prime Contract Utilization:
Contracts Valued at over \$25,000 and Less than \$1,030,000, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	6	4.88%	\$1,520,405	5.69%
Asian Americans	3	2.44%	\$326,558	1.22%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	4	3.25%	\$1,075,461	4.02%
Non-minority Males	110	89.43%	\$23,816,485	89.07%
TOTAL	123	100.00%	\$26,738,910	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	2	1.63%	\$567,769	2.12%
African American Males	4	3.25%	\$952,637	3.56%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	3	2.44%	\$326,558	1.22%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	4	3.25%	\$1,075,461	4.02%
Non-minority Males	110	89.43%	\$23,816,485	89.07%
TOTAL	123	100.00%	\$26,738,910	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	9	7.32%	\$1,846,964	6.91%
Woman Business Enterprises	6	4.88%	\$1,643,230	6.15%

4. Goods and Services Prime Contract Utilization: Contracts Valued at over \$25,000 and Less than \$620,000

Table 3.27 summarizes all contract dollars expended by the County on goods and services prime contracts valued at over \$25,000 and less than \$620,000. MBEs received 4.11% of the goods and services prime contract dollars; WBEs received 8.64%; and non-MWBEs received 88.01%.

African Americans received 17, or 2.00% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$2,284,659, or 2.01% of the goods and services prime contract dollars.

Asian Americans received 10, or 1.18% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$1,674,532, or 1.48% of the goods and services prime contract dollars.

Hispanic Americans received 5, or 0.59% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$705,801, or 0.62% of the goods and services prime contract dollars.

Native Americans received no goods and services prime contracts valued at over \$25,000 and less than \$620,000 during the study period.

Caucasian Females received 57, or 6.72% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$8,935,554, or 7.87% of the goods and services prime contract dollars.

Non-minority Males received 759, or 89.50% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$99,868,569, or 88.01% of the goods and services prime contract dollars.

Minority Business Enterprises received 32, or 3.77% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$4,664,992, or 4.11% of the goods and services prime contract dollars.

Woman Business Enterprises received 61, or 7.19% of the goods and services prime contracts valued at over \$25,000 and less than \$620,000 awarded during the study period, representing \$9,798,678, or 8.64% of the goods and services prime contract dollars.



**Table 3.27: Goods and Services Prime Contract Utilization:
Contracts Valued at over \$25,000 and Less than \$620,000, July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	17	2.00%	\$2,284,659	2.01%
Asian Americans	10	1.18%	\$1,674,532	1.48%
Hispanic Americans	5	0.59%	\$705,801	0.62%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	57	6.72%	\$8,935,554	7.87%
Non-minority Males	759	89.50%	\$99,868,569	88.01%
TOTAL	848	100.00%	\$113,469,115	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	0.47%	\$863,124	0.76%
African American Males	13	1.53%	\$1,421,535	1.25%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	10	1.18%	\$1,674,532	1.48%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	5	0.59%	\$705,801	0.62%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	57	6.72%	\$8,935,554	7.87%
Non-minority Males	759	89.50%	\$99,868,569	88.01%
TOTAL	848	100.00%	\$113,469,115	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	32	3.77%	\$4,664,992	4.11%
Woman Business Enterprises	61	7.19%	\$9,798,678	8.64%

V. Summary

The prime contractor utilization analysis examined \$1,650,341,560 worth of prime contracts awarded by the County during the July 1, 2012 to June 30, 2017 study period. The \$1,650,341,560 expended included \$849,709,797 for construction, \$282,587,338 for architecture and engineering services, \$71,618,625 for professional services, and \$446,425,800 for goods and services. A total of 3,633 prime contracts were analyzed, which included 477 for construction, 188 for architecture and engineering services, 320 for professional services, and 2,648 for goods and services.

The utilization analysis was performed for prime contracts in the four industries at three-dollar thresholds: (1) all prime contracts regardless of award amount; (2) all informal prime contracts valued at \$25,000 and less for construction, professional services, and goods and services, as defined by the Purchasing Manual; and (3) formal prime contracts with thresholds set for each industry to eliminate outliers. Given the application of the thresholds, the formal prime contracts analyzed were valued at over \$25,000 and less than \$5,690,000 for construction, less than \$3,810,000 for architecture and engineering services, over \$25,000 and less than \$1,030,000 for professional services, and over \$25,000 and less than \$620,000 for goods and services. *Chapter 7: Prime Contract Disparity Analysis* presents the statistical analysis of disparity in each of the four industries.



CHAPTER 4: Subcontractor Utilization Analysis

I. Introduction

A disparity study, as required by *Croson*, must document the local government's utilization of available Minority and Woman-owned Business Enterprises (MWBE), and non-minority male-owned businesses (non-Minority males) as prime contractors and subcontractors. The objective of this chapter is to present the utilization by ethnicity, gender, and industry of MWBEs and non-Minority males as construction, architecture, engineering, and professional services subcontractors. The analysis examined the subcontracts awarded by Baltimore County's (County) prime contractors during the July 1, 2012 to June 30, 2017 study period.

II. Data Sources

The County did not maintain comprehensive data on the subcontracts awarded by its prime contractors. Consequently, extensive research was required to reconstruct the subcontracts issued by the County's prime contractors on construction, architecture and engineering services, and professional services prime contracts. Mason Tillman Associates, Ltd. (Mason Tillman) compiled the subcontract data in conjunction with the County. Since subcontract records had to be reconstructed, the analysis was limited to construction prime contracts valued \$500,000 and over, architecture and engineering services valued \$500,000 and over, and professional services prime contracts valued \$200,000 and over.

A. Data Collection Process

Several methods were used to compile the subcontract data, in addition to the initial data collection from the County's department records. A survey was used to collect subcontract records from the County's prime contractors. Onsite data collection at the County's departments was also used to compile the most comprehensive dataset of subcontracts. The County also reached out to prime contractors to encourage them to provide data on payments made to subcontractors. The data collection process was undertaken between February 21, 2020 to August 11, 2020.

1. County Provided Subcontract Records

The County provided six electronic files containing subcontract award and payment records. The subcontract data were extracted from County's forms that were completed by prime contractors and submitted throughout the duration of the contract.

Subcontract records were also requested directly from the County departments that awarded construction, architecture, engineering, and professional services contracts during the study period. Thirty-two departments were initially contacted. Twenty-seven departments provided subcontract



records for one or more of their prime contracts. Five departments did not provide any subcontract records.

2. Prime Contractor Expenditure Survey

A survey was conducted to collect the prime contractors' subcontractor and subconsultant data. The prime contractors were asked to provide the name, award, and payment amount for each subcontractor, subconsultant, supplier, and trucker who worked on each contract that the County awarded to the prime contractor during the study period. To maximize the response rate, a letter from the County Administrator requesting the prime contractor's cooperation accompanied each survey. Mason Tillman made follow-up calls to each prime contractor to address any questions concerning the Study and encouraged the business to submit its subcontract records. Of the 168 prime contractors surveyed, 52 provided subcontract data. To increase the response rate, the Baltimore County Minority and Small Business Department also reached out to prime contractors to request additional cooperation providing subcontractor data.

3. On-Site Subcontract Data Collection

In the final effort to reconstruct the subcontracts awarded by the County's prime contractors, Mason Tillman conducted on-site research. Mason Tillman conducted on-site data collection research on prime contracts missing subcontract data.

In anticipation of the onsite research, the departments pulled the prime contract project files for examination by the field researchers. The collection strategies included retrieving subcontracts from prime contract documents pulled from document storage, and from contract and project management files located onsite. All electronic and hard copy records made available were reviewed for subcontract award and payment data.

B. Subcontract Data Analysis

The subcontract records that were able to be reconstructed from the various sources listed above were appended to the relational database and cleaned to remove duplicate records. The ethnicity and gender of each subcontractor was verified through a combination of certification directories, Internet research, and telephone surveys. Once the data were cleaned, the subcontract utilization tables were prepared for the two industries, identifying the dollars and number of subcontracts awarded to each ethnic and gender group. Subcontractor utilization is organized by ethnicity and gender within the two industries and presented below.



III. Subcontractor Utilization

A. All Subcontracts

As shown in Table 4.1, 3,781 of the reconstructed subcontracts with either award or payment data were analyzed. The subcontracts reconstructed included 3,572 construction and 209 architecture, engineering, and professional services subcontracts.

There were \$175,756,133 subcontract dollars analyzed for the July 1, 2012 to June 30, 2017 study period. These dollars included \$151,734,117 for construction and \$24,022,015 for architecture, engineering, and professional services subcontracts.

**Table 4.1: Subcontracts Awarded and Dollars Expended by Industry,
July 1, 2012 to June 30, 2017**

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	3,572	\$151,734,117
Architecture, Engineering, and Professional Services	209	\$24,022,015
Total	3,781	\$175,756,133



B. Subcontracts by Industry

1. Construction Subcontracts

Table 4.2 shows the identified construction subcontracts awarded by the County's prime contractors. Minority-owned businesses (MBE) received 12.87%; woman-owned businesses (WBE) received 19.20%; and non-minority male-owned businesses (non-Minority males) received 69.40% of the construction subcontract dollars.

African Americans received 128 or 3.58% of construction subcontracts during the study period, representing \$7,684,057 or 5.06% of the construction subcontract dollars.

Asian Americans received 46 or 1.29% of construction subcontracts during the study period, representing \$2,611,033 or 1.72% of the construction subcontract dollars.

Hispanic Americans received 92 or 2.58% of construction subcontracts during the study period, representing \$8,317,734 or 5.48% of the construction subcontract dollars.

Native Americans received 12, or 0.34%, of construction subcontracts during the study period, representing \$916,461 or 0.60% of the construction subcontract dollars.

Caucasian Females received 352, or 9.85%, of construction subcontracts during the study period, representing \$26,902,023 or 17.73% of the construction subcontract dollars.

Non-minority Males received 2,942 or 82.36% of construction subcontracts during the study period, representing \$105,302,809 or 69.40% of the construction subcontract dollars.

Minority Business Enterprises received 278, or 7.78%, of construction subcontracts during the study period, representing \$19,529,285 or 12.87% of the construction subcontract dollars.

Woman Business Enterprises received 379 or 10.61% of construction subcontracts during the study period, representing \$29,131,513 or 19.20% of the construction subcontract dollars.



**Table 4.2: Construction Subcontractor Utilization,
July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	128	3.58%	\$7,684,057	5.06%
Asian Americans	46	1.29%	\$2,611,033	1.72%
Hispanic Americans	92	2.58%	\$8,317,734	5.48%
Native Americans	12	0.34%	\$916,461	0.60%
Caucasian Females	352	9.85%	\$26,902,023	17.73%
Non-minority Males	2,942	82.36%	\$105,302,809	69.40%
TOTAL	3,572	100.00%	\$151,734,117	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	13	0.36%	\$942,878	0.62%
African American Males	115	3.22%	\$6,741,179	4.44%
Asian American Females	1	0.03%	\$2,718	0.00%
Asian American Males	45	1.26%	\$2,608,314	1.72%
Hispanic American Females	11	0.31%	\$1,270,173	0.84%
Hispanic American Males	81	2.27%	\$7,047,561	4.64%
Native American Females	2	0.06%	\$13,721	0.01%
Native American Males	10	0.28%	\$902,740	0.59%
Caucasian Females	352	9.85%	\$26,902,023	17.73%
Non-minority Males	2,942	82.36%	\$105,302,809	69.40%
TOTAL	3,572	100.00%	\$151,734,117	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	278	7.78%	\$19,529,285	12.87%
Woman Business Enterprises	379	10.61%	\$29,131,513	19.20%



2. Architecture, Engineering, and Professional Services Subcontracts

Table 4.3 shows the architecture, engineering, and professional services subcontracts issued by the County's prime contractors. MBEs received 11.72%; WBEs received 15.51%; and non-Minority males received 75.65% of the architecture, engineering, and professional services subcontract dollars.

African Americans received 10 or 4.78% of architecture, engineering, and professional services subcontracts during the study period, representing \$1,274,003 or 5.30% of the architecture and engineering subcontract dollars.

Asian Americans received 14 or 6.70% of architecture, engineering, and professional services subcontracts during the study period, representing \$1,306,583 or 5.44% of the architecture and engineering subcontract dollars.

Hispanic Americans received 2 or 0.96% of architecture, engineering, and professional services subcontracts during the study period, representing \$235,604 or 0.98% of the architecture and engineering subcontract dollars.

Native Americans received no architecture, engineering, and professional services subcontracts during the study period.

Caucasian Females received 26 or 12.44% of architecture, engineering, and professional services subcontracts during the study period, representing \$3,033,961 or 12.63% of the architecture and engineering subcontract dollars.

Non-minority Males received 157 or 75.12% of architecture, engineering, and professional services subcontracts during the study period, representing \$18,171,864 or 75.65% of the architecture and engineering subcontract dollars.

Minority Business Enterprises received 26 or 12.44% of architecture, engineering, and professional services subcontracts during the study period, representing \$2,816,190 or 11.72% of the architecture and engineering subcontract dollars.

Woman Business Enterprises received 30 or 14.35% of architecture, engineering, and professional services subcontracts during the study period, representing \$3,725,097 or 15.51% of the architecture and engineering subcontract dollars.



**Table 4.3: Architecture, Engineering, and Professional Services Subcontractor Utilization,
July 1, 2012 to June 30, 2017**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	10	4.78%	\$1,274,003	5.30%
Asian Americans	14	6.70%	\$1,306,583	5.44%
Hispanic Americans	2	0.96%	\$235,604	0.98%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	26	12.44%	\$3,033,961	12.63%
Non-minority Males	157	75.12%	\$18,171,864	75.65%
TOTAL	209	100.00%	\$24,022,015	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	2	0.96%	\$430,647	1.79%
African American Males	8	3.83%	\$843,356	3.51%
Asian American Females	1	0.48%	\$29,394	0.12%
Asian American Males	13	6.22%	\$1,277,188	5.32%
Hispanic American Females	1	0.48%	\$231,094	0.96%
Hispanic American Males	1	0.48%	\$4,510	0.02%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	26	12.44%	\$3,033,961	12.63%
Non-minority Males	157	75.12%	\$18,171,864	75.65%
TOTAL	200	100.00%	\$24,022,015	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	26	12.44%	\$2,816,190	11.72%
Woman Business Enterprises	30	14.35%	\$3,725,097	15.51%



IV. Summary

The construction, architecture, engineering, and professional services subcontracts awarded by Baltimore County prime contractors had to be reconstructed using a multi-faceted research approach because the County did not maintain comprehensive subcontract records. The subcontract utilization analysis was therefore limited to the subcontract records that could be reconstructed through the combined effort of the County, the County's prime contractors, and Mason Tillman. The subcontract utilization analysis was limited to the construction, architecture, engineering, and professional services prime contracts for which subcontracts records were complete or could be reconstructed. The reconstructed construction and architecture, engineering, and professional services subcontracts were valued at \$175,756,133. The reconstructed subcontracts examined were awarded by the County's prime contractors from July 1, 2012 to June 30, 2017. The expended \$175,756,133 included \$151,734,117 for construction and \$24,022,015 for architecture, engineering, and professional services. A total of 3,781 subcontracts were analyzed, which included 3,572 for construction, and 209 for architecture, engineering, and professional services.



CHAPTER 5: Market Area Analysis

I. Market Area Definition

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*¹⁹⁹ (*Croson*) held that a local government's program established to set goals for the participation of Minority-owned Business Enterprises (MBEs) must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local governments could implement race-conscious programs without documenting the underutilization of MBEs on their awarded contracts. Before the *Croson* decision, local governments could simply rely on widely-recognized societal patterns of discrimination.²⁰⁰

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based contracting program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.²⁰¹ In *Croson*, the United States Supreme Court found the City of Richmond, Virginia's MBE construction contracting program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

Croson was explicit in saying that the local construction market was the appropriate geographical framework within which to perform a statistical comparison of business availability to business utilization. Therefore, the identification of the local market area is particularly important because it establishes the parameters within which to conduct a disparity study.

B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of the City of Richmond, Virginia's market area. In discussing the geographic parameters of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market," "Richmond construction industry,"²⁰² and "city's construction industry."²⁰³ These terms were used to define the proper scope for examining the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of the contracting jurisdiction.

¹⁹⁹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²⁰⁰ *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

²⁰¹ *Croson*, 488 U.S. at 497.

²⁰² *Id.* at 500.

²⁰³ *Id.* at 470.



An analysis of the cases following *Croson* provides additional guidance for defining the market area. The body of cases examining the *reasonable* market area definition is *fact-based*—rather than dictated by a specific formula.²⁰⁴ In *Cone Corporation v. Hillsborough County*,²⁰⁵ the United States Eleventh Circuit Court of Appeals considered a disparity study in support of Hillsborough County, Florida’s MBE Program. The MBE program used minority contractors located in Hillsborough County as the measure of available businesses. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County’s program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by Hillsborough County, not in the construction industry in general. Hillsborough County extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The Court stated that the disparity study was properly conducted within the “local construction industry.”²⁰⁶

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,²⁰⁷ the United States Ninth Circuit Court of Appeals found the City and County of San Francisco, California’s MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a disparity study that assessed the number of available MBE contractors within the City and County of San Francisco. The Court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.²⁰⁸

In *Coral Construction v. King County*, the United States Ninth Circuit Court of Appeals held that “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”²⁰⁹ In support of its MBE program, King County, Washington offered studies compiled by other jurisdictions, including entities completely within the County, others coterminous with the boundaries of the County, as well as a jurisdiction significantly distant from King County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* as prohibiting data sharing.

The Court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program. However, the Court also found that the data from entities within King County and from coterminous jurisdictions were relevant to discrimination in the County. Furthermore, the court found that the data posed no risk of unfairly burdening innocent third parties.

²⁰⁴ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994) (“*Concrete Works*”).

²⁰⁵ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

²⁰⁶ *Cone*, 908 F.2d at 915.

²⁰⁷ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

²⁰⁸ *AGCCII*, 950 F.2d at 1415.

²⁰⁹ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).



The Court concluded that data gathered by a neighboring county could not be used to support King County’s MBE program. The Court noted, “It is vital that a race-conscious program align itself as closely to the scope of the problem sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.”²¹⁰ However, the Court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”²¹¹

There are other situations when the courts have approved a market area definition that extended beyond a jurisdiction’s geographic boundaries. In *Concrete Works v. City and County of Denver* (*Concrete Works*),²¹² the United States Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the “local market area” for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver, Colorado Metropolitan Statistical Area (Denver MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the Court’s acceptance of the Denver MSA as the relevant local market was the finding that more than 80% of construction and design contracts awarded by the City and County of Denver were awarded to contractors within the Denver MSA. Another consideration was that the City and County of Denver’s analysis was based on United States Census data, which were available for the Denver MSA but not for the City of Denver itself. There was no undue burden placed on nonculpable parties, as the City and County of Denver had expended a majority of its construction contract dollars within the area defined as the local market. Citing *AGCC II*,²¹³ the Court noted “that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions the city has taken in the past have visited racial discrimination on such individuals.”²¹⁴

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority business owners in the government’s marketplace.²¹⁵

II. Market Area Analysis

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, the case law, taken collectively, supports a definition of the market area as the geographical boundaries where the government entity spent the majority of its dollars. Thus, the Study’s market area is determined to be Baltimore County and Baltimore City.

²¹⁰ *Coral*, 941 F.2d at 917.

²¹¹ *Id.*

²¹² *Concrete Works*, 36 F.3d at 1528.

²¹³ *AGCC II*, 950 F.2d at 1401.

²¹⁴ *Concrete Works*, 36 F.3d at 1528.

²¹⁵ *Croson*, 488 U.S. at 501.



A. Summary of the Distribution of All Prime Contracts Awarded

The County awarded 3,633 prime contracts valued at \$1,650,341,560 during the July 1, 2012 to June 30, 2017, study period. The distribution of all prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown in Table 5.1.

Table 5.1: Distribution of All Contracts Awarded

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Baltimore City	793	21.83%	\$409,633,439	24.82%
Baltimore County	536	14.75%	\$387,540,591	23.48%
Howard County	190	5.23%	\$105,831,561	6.41%
Prince George's County	132	3.63%	\$92,006,378	5.57%
Anne Arundel County	178	4.90%	\$83,411,202	5.05%
Carroll County	85	2.34%	\$70,327,537	4.26%
Harford County	160	4.40%	\$42,044,865	2.55%
Montgomery County	73	2.01%	\$25,407,827	1.54%
Frederick County	18	0.50%	\$6,796,797	0.41%
Washington County	20	0.55%	\$6,339,661	0.38%
Wicomico County	10	0.28%	\$3,545,479	0.21%
Queen Anne's County	41	1.13%	\$2,442,907	0.15%
Talbot County	12	0.33%	\$653,211	0.04%
St. Mary's County	1	0.03%	\$127,700	0.01%
Allegany County	7	0.19%	\$123,625	0.01%
Charles County	1	0.03%	\$90,440	0.01%
Dorchester County	2	0.06%	\$75,632	0.00%
Caroline County	1	0.03%	\$23,400	0.00%
Out Of State	1,354	37.27%	\$406,324,587	24.62%
Out Of Country	19	0.52%	\$7,594,720	0.46%
Total	3,633	100.00%	\$1,650,341,560	100.00%

B. Distribution of Construction Prime Contracts

The County awarded 477 construction prime contracts valued at \$849,709,797 during the study period. Businesses located in the market area received 55.77% of the construction prime contracts and 44.77% of the dollars. The distribution of the construction prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown in Table 5.2.



Table 5.2: Distribution of Construction Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Baltimore County	110	23.06%	\$198,680,860	23.38%
Baltimore City	156	32.70%	\$181,708,921	21.38%
Prince George's County	36	7.55%	\$74,547,084	8.77%
Carroll County	17	3.56%	\$62,846,440	7.40%
Howard County	27	5.66%	\$38,954,101	4.58%
Harford County	29	6.08%	\$33,872,029	3.99%
Anne Arundel County	24	5.03%	\$27,539,536	3.24%
Montgomery County	10	2.10%	\$13,215,269	1.56%
Queen Anne's County	11	2.31%	\$1,487,645	0.18%
Frederick County	1	0.21%	\$1,366,077	0.16%
Wicomico County	1	0.21%	\$312,300	0.04%
Out Of State	55	11.53%	\$215,179,536	25.32%
Total	477	100.00%	\$849,709,797	100.00%

C. Distribution of Architecture and Engineering Services Prime Contracts

The County awarded 188 architecture and engineering services prime contracts valued at \$282,587,338 during the study period. Businesses located in the market area received 73.94% of the architecture and engineering services prime contracts and 82.21% of the dollars. The distribution of the architecture and engineering services prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown in Table 5.3.

Table 5.3: Distribution of Architecture and Engineering Services Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Baltimore City	67	35.64%	\$125,146,361	44.29%
Baltimore County	72	38.30%	\$107,154,949	37.92%
Anne Arundel County	8	4.26%	\$12,439,128	4.40%
Howard County	20	10.64%	\$11,627,507	4.11%
Prince George's County	3	1.60%	\$5,876,948	2.08%
Frederick County	2	1.06%	\$4,636,974	1.64%
Harford County	2	1.06%	\$795,467	0.28%
Talbot County	1	0.53%	\$147,344	0.05%
Montgomery County	1	0.53%	\$24,970	0.01%
Carroll County	1	0.53%	\$4,000	0.00%
Out Of State	11	5.85%	\$14,733,689	5.21%
Total	188	100.00%	\$282,587,338	100.00%



D. Distribution of Professional Services Prime Contracts

The County awarded 320 professional services prime contracts valued at \$71,618,625 during the study period. Businesses located in the market area received 20.31% of the professional services prime contracts and 43.26% of the dollars. The distribution of the professional services prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown in Table 5.4.

Table 5.4: Distribution of Professional Services Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Baltimore City	37	11.56%	\$16,149,005	22.55%
Baltimore County	28	8.75%	\$14,834,109	20.71%
Howard County	18	5.63%	\$4,350,617	6.07%
Anne Arundel County	12	3.75%	\$2,577,163	3.60%
Montgomery County	13	4.06%	\$1,071,221	1.50%
Prince George's County	7	2.19%	\$624,638	0.87%
Harford County	32	10.00%	\$180,919	0.25%
St. Mary's County	1	0.31%	\$127,700	0.18%
Allegany County	1	0.31%	\$58,950	0.08%
Frederick County	2	0.63%	\$26,440	0.04%
Queen Anne's County	2	0.63%	\$20,789	0.03%
Out Of State	163	50.94%	\$30,584,980	42.71%
Out Of Country	4	1.25%	\$1,012,095	1.41%
Total	320	100.00%	\$71,618,625	100.00%

E. Distribution of Goods and Services Prime Contracts

The County awarded 2,648 goods and services prime contracts valued at \$446,425,800 during the study period. Businesses located in the market area received 32.44% of the goods and services prime contracts and 34.38% of the dollars. The distribution of the goods and services prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown in Table 5.5.



Table 5.5: Distribution of Goods and Services Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Baltimore City	533	20.13%	\$86,629,152	19.41%
Baltimore County	326	12.31%	\$66,870,673	14.98%
Howard County	125	4.72%	\$50,899,335	11.40%
Anne Arundel County	134	5.06%	\$40,855,376	9.15%
Montgomery County	49	1.85%	\$11,096,367	2.49%
Prince George's County	86	3.25%	\$10,957,708	2.45%
Carroll County	67	2.53%	\$7,477,097	1.67%
Harford County	97	3.66%	\$7,196,450	1.61%
Washington County	20	0.76%	\$6,339,661	1.42%
Wicomico County	9	0.34%	\$3,233,179	0.72%
Queen Anne's County	28	1.06%	\$934,473	0.21%
Frederick County	13	0.49%	\$767,307	0.17%
Talbot County	11	0.42%	\$505,868	0.11%
Charles County	1	0.04%	\$90,440	0.02%
Dorchester County	2	0.08%	\$75,632	0.02%
Allegany County	6	0.23%	\$64,675	0.01%
Caroline County	1	0.04%	\$23,400	0.01%
Out Of State	1,125	42.48%	\$145,826,383	32.67%
Out Of Country	15	0.57%	\$6,582,625	1.47%
Total	2,648	100.00%	\$446,425,800	100.00%

III. Summary

During the study period, the County awarded 3,633 construction, architecture and engineering services, professional services, and goods and services prime contracts valued at \$1,650,341,560. The County awarded 36.58% of prime contracts and 48.30% of dollars to businesses domiciled within the market area.

Table 5.6 shows an overview of the number of the construction, architecture and engineering services, professional services, and goods and services prime contracts that the County awarded, and the dollars spent during the study period.

Construction Prime Contracts: 266 or 55.77% of construction prime contracts were awarded to market area businesses. Construction prime contracts in the market area accounted for \$380,389,780 or 44.77% of the total construction prime contract dollars.

Architecture and Engineering Services Prime Contracts: 139 or 73.94% of architecture and engineering services prime contracts were awarded to market area businesses. Architecture and engineering services prime contracts in the market area accounted for \$232,301,311 or 82.21% of the total architecture and engineering services prime contract dollars.



Professional Services Prime Contracts: 65 or 20.31% of professional services prime contracts were awarded to market area businesses. Professional services prime contracts in the market area accounted for \$30,983,114 or 43.26% of the total professional services prime contract dollars.

Goods and Services Prime Contracts: 859 or 32.44% of goods and services prime contracts were awarded to market area businesses. Goods and services prime contracts in the market area accounted for \$153,499,825 or 34.38% of the total goods and services prime contract dollars.

Table 5.6: Baltimore County Contract Distribution

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Combined Industries				
Market Area	1,329	36.58%	\$797,174,030	48.30%
Outside Market Area	2,304	63.42%	\$853,167,530	51.70%
TOTAL	3,633	100.00%	\$1,650,341,560	100.00%
Construction				
Market Area	266	55.77%	\$380,389,780	44.77%
Outside Market Area	211	44.23%	\$469,320,017	55.23%
TOTAL	477	100.00%	\$849,709,797	100.00%
Architecture and Engineering Services				
Market Area	139	73.94%	\$232,301,311	82.21%
Outside Market Area	49	26.06%	\$50,286,027	17.79%
TOTAL	188	100.00%	\$282,587,338	100.00%
Professional Services				
Market Area	65	20.31%	\$30,983,114	43.26%
Outside Market Area	255	79.69%	\$40,635,511	56.74%
TOTAL	320	100.00%	\$71,618,625	100.00%
Goods and Services				
Market Area	859	32.44%	\$153,499,825	34.38%
Outside Market Area	1,789	67.56%	\$292,925,975	65.62%
TOTAL	2,648	100.00%	\$446,425,800	100.00%

CHAPTER 6: Prime Contractor and Subcontractor Availability Analysis

I. Introduction

According to *City of Richmond v. J.A. Croson Co. (Croson)*, availability is defined as the number of businesses in the jurisdiction's market area that are ready, willing, and able to provide the goods or services procured by the jurisdiction.²¹⁶ To determine the availability of Minority and Woman-owned Business Enterprises (MWBs) and non-minority male-owned business enterprises (non-Minority males) within the jurisdiction's market area, businesses domiciled within the market area need to be enumerated. As defined in *Chapter 5: Market Area Analysis*, the market area is the jurisdictional boundaries of Baltimore County and the City of Baltimore.

When considering sources to determine the number of available MWBs and non-Minority males in the market area, the selection must be based on whether two aspects of the population in question can be gauged from the sources. One aspect is a business' interest in contracting with the jurisdiction, as implied by the term "willing." The other is the business' ability or capacity to provide a service or good, as implied by the term "able." The enumeration of available businesses met these criteria.

II. Prime Contractor Availability Data Sources

A. Identification of Willing Businesses Within the Market Area

To identify willing and able businesses in Baltimore County's market area that provide the construction, architecture and engineering services, professional services, and goods and services contracts that the County procures, three main sources of information were used: 1) county records, including utilized businesses; 2) government certification directories; and 3) business association membership lists. Only businesses on the membership lists that were determined to be willing, ready, and able were added to the availability list. Any business listed in more than one source was only counted once in the relevant industry. If a business were willing and able to provide goods or services in more than one industry, it was listed separately in each industry.

The three sources were ranked according to their reliability in determining a business' willingness to contract with the County, with the highest ranking assigned to the utilized businesses. Government certification lists ranked second, and business association membership lists ranked third. Therefore, the first document used to build the availability database was the County's utilized businesses. Businesses identified from federal, state, and local government certification agencies were thereafter appended. The local certification lists included small, minority, and

²¹⁶ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



woman business enterprises. Businesses identified from association membership lists that also affirmed their willingness through a survey of business association members or attending a business community meeting were also appended. The business associations included trade organizations, professional organizations, and chambers of commerce.

B. Prime Contractor Sources

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories. Table 6.1 shows the County records, certification directories, and business association listings utilized.



Table 6.1: Prime Contractor Availability Data Sources

Source Name	Type of Information
Baltimore County Records	
Copy of Disparity Study - Award Report and Payment	MWBE and Non-minority Male
Current Master Contract List Property Management	MWBE and Non-minority Male
Government Certification Directories	
Baltimore City - Minority and Women's Business Enterprises Certifications	MWBE
City of Baltimore - Law Department - Minority and Women's Business Opportunity Office	MWBE
Maryland Department of Transportation Office of Minority Business Enterprise	MWBE and Non-minority Male
U.S. Small Business Administration Baltimore County_8(a)	MWBE and Non-minority Male
U.S. Small Business Administration Baltimore County_HubZone	MWBE and Non-minority Male
U.S. Small Business Administration Baltimore County_SDB	MWBE and Non-minority Male
U.S. Small Business Administration Baltimore County_Veterans	MWBE and Non-minority Male
U.S. Small Business Administration Baltimore County_Women Owned	MWBE
Business Association Membership Lists	
American Concrete Pavement Association MidAtlantic Chapter	Non-minority Male
American Council of Engineering Companies	MWBE and Non-minority Male
American Fire Sprinkler Association	Non-minority Male
American Institute of Architects, Maryland Chapter	MWBE and Non-minority Male
American Shotcrete Association	Non-minority Male
American Society of Landscape Architects	MWBE and Non-minority Male
Associated Builders and Contractors Baltimore Chapter	MWBE and Non-minority Male
Associated General Contractors, Maryland Chapter	MWBE and Non-minority Male
Association of Air Conditioning Professionals	MWBE and Non-minority Male
Baltimore County Business Association	Non-minority Male
Baltimore County Chamber of Commerce	MWBE and Non-minority Male
Chesapeake Gateway Chamber Of Commerce	MWBE and Non-minority Male
Greater Catonsville Chamber of Commerce	MWBE and Non-minority Male
Maryland Asphalt Association	MWBE and Non-minority Male
Maryland Minority Contractors Association	MWBE
MD Washington Minority Companies Association LLC	MWBE and Non-minority Male
Mechanical Contractors Association Maryland	MWBE and Non-minority Male
Mid Atlantic Roofing Contractors Association	MWBE and Non-minority Male
Mid-Atlantic Masonry Association	Non-minority Male
National Association of Women Business Owners, Greater DC Chapter	MWBE
National Concrete Masonry Association	Non-minority Male
National Electrical Contractors Association, Maryland Chapter	MWBE and Non-minority Male
National Fire Sprinkler Association	Non-minority Male
National Insulation Association	MWBE and Non-minority Male
National Sheet Metal and Air Conditioning Contractors Association, Mid-Atlantic Chapter	Non-minority Male
National Tile Contractors Association	MWBE and Non-minority Male
Pikesville Owings Mill Regional Chamber of Commerce	MWBE and Non-minority Male



C. Determination of Willingness

From the three sources listed in the previous section, 2,121 unique market area businesses were identified that can provide goods or services in one or more of the four industries in the Study. An accounting of the willing businesses derived by source is listed below.

1. County Records

A total of 394 unique market area businesses were added to the availability database from County records.

2. Government Certification Lists

A total of 1,471 unique market area businesses were added to the availability database from government certification lists.

3. Business Association Membership Lists

A total of 625 unique market area businesses were identified from business association membership lists. From the 625 identified businesses, 572 had phone numbers. These businesses were surveyed to determine their willingness to contract with the County. Of the 572 surveyed businesses, 60 refused to participate, 13 telephone numbers were disconnected, 421 did not respond, and 78 businesses completed the survey. Of the 572 surveyed businesses, 254 were confirmed as willing and added to the availability database.

D. Distribution of Available Prime Contractors by Source, Ethnicity, and Gender

Tables 6.2 through 6.5 present the distribution of willing prime contractors by source. A distribution of available businesses by source was also calculated for each industry. As noted in Table 6.2, 78.39% of the construction businesses identified were derived from County records and government certification lists. Companies identified through the business association membership lists represent 21.61% of the willing businesses.



**Table 6.2: Distribution of Prime Contractor Availability Data Sources,
Construction**

Sources	MWBEs Percentage	Non MWBEs Percentage	Source Percentage
Prime Contractor Utilization	5.86%	25.68%	13.92%
Certification Lists	93.52%	22.07%	64.47%
Subtotal			78.39%
Willingness Survey	0.62%	52.25%	21.61%
Subtotal	0.62%	52.25%	21.61%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 6.3 shows the data sources for the available architecture and engineering services prime contractors. As noted, 97.20% of the architecture and engineering services businesses identified were derived from County records and government certification lists. Companies identified through the business association membership lists represent 2.80% of the willing businesses.

**Table 6.3: Distribution of Prime Contractor Availability Data Sources,
Architecture and Engineering Services**

Sources	MWBEs Percentage	Non-MWBEs Percentage	Source Percentage
Prime Contractor Utilization	3.45%	60.87%	21.96%
Certification Lists	96.55%	30.43%	75.23%
Subtotal	100.00%	91.30%	97.20%
Willingness Survey	0.00%	8.70%	2.80%
Subtotal	0.00%	8.70%	2.80%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 6.4 shows the data sources for the available professional services prime contractors. As noted, 92.63% of the professional services businesses identified were derived from County records and government certification lists. Companies identified through the business association membership lists represent 7.37% of the willing businesses.



**Table 6.4: Distribution of Prime Contractor Availability Data Sources,
Professional Services**

Sources	MWBEs Percentage	Non-MWBEs Percentage	Source Percentage
Prime Contractor Utilization	1.42%	16.86%	5.41%
Certification Lists	97.97%	56.40%	87.22%
Subtotal	99.39%	73.26%	92.63%
Willingness Survey	0.41%	26.74%	7.22%
Business Survey	0.20%	0.00%	0.15%
Subtotal	0.61%	26.74%	7.37%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 6.5 shows the data sources for the available goods and services prime contractors. As noted, 89.00% of the goods and services businesses identified were derived from County records and government certification lists. Companies identified through the business association membership lists represent 11.00% of the willing businesses.

**Table 6.5: Distribution of Prime Contractor Availability Data Sources,
Goods and Services**

Sources	MWBEs Percentage	Non-MWBEs Percentage	Source Percentage
Prime Contractor Utilization	11.37%	57.97%	34.45%
Certification Lists	87.44%	21.01%	54.55%
Subtotal	98.82%	78.99%	89.00%
Willingness Survey	0.95%	21.01%	10.89%
Business Survey	0.24%	0.00%	0.12%
Subtotal	1.18%	21.01%	11.00%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding



III. Capacity

The second component of the availability requirement set forth in *Croson* is the capacity or ability of a business to perform the contracts awarded by the jurisdiction.²¹⁷ Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Specifically, the Third Circuit Court of Appeals held certification to be a valid method of defining availability.²¹⁸ In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, the court held that utilizing a list of certified contractors was a rational approach to identify qualified, willing firms.²¹⁹ The court stated “[a]n analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach [of qualification].”²²⁰ As noted in *Philadelphia*, “[t]he issue of qualifications can be approached at different levels of specificity using census data[.]”²²¹ Researchers have attempted to define capacity by profiling the age of the business, education of the business owner, business revenue, number of employees, and bonding limits. However, these conventional indices are themselves impacted by race and gender-based discrimination.²²²

Given the limitations of the census data, Mason Tillman assessed the capacity of Minority and Woman Business Enterprises using four measures that controlled for the impact of race and gender discrimination. The first method was a review of the distribution of contracts to determine the size of the contracts that the County awarded. The second was the identification of the largest contracts awarded to MWBEs. The third was an analysis of the frequency distribution of the County’s contracts awarded to MWBEs and non-minority male-owned businesses. The fourth was a threshold analysis that limited the range of the formal prime contracts analyzed by eliminating outliers. And fifth was a business capacity analysis that assessed relevant socioeconomic factors in the private sector affecting business formation and revenue.

A. Prime Contract Size Distribution

All of the County’s contracts were ordered by the size of the award to determine the distribution of the awarded contracts. The purpose of this distribution was to gauge the capacity required to perform the County’s contracts. In Table 6.10, contract awards in the four industries were grouped into nine ranges and are presented by minority females, minority males, Caucasian females, and non-minority males.

²¹⁷ *Croson*, 488 U.S. 469.

²¹⁸ *Contractors Ass’n of E. Pa.*, 91 F.3d at 603.

²¹⁹ *Id.*

²²⁰ *Id.* at 603; see also, *Concrete Works IV*, 321 F.3d at 966 (noting a less sophisticated method to calculate availability does not render a disparity study flawed.)

²²¹ *Contractors Ass’n of E. Pa.*, 91 F.3d at 610.

²²² David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," *The Review of Economics and Statistics*, MIT Press, vol. 85(4).

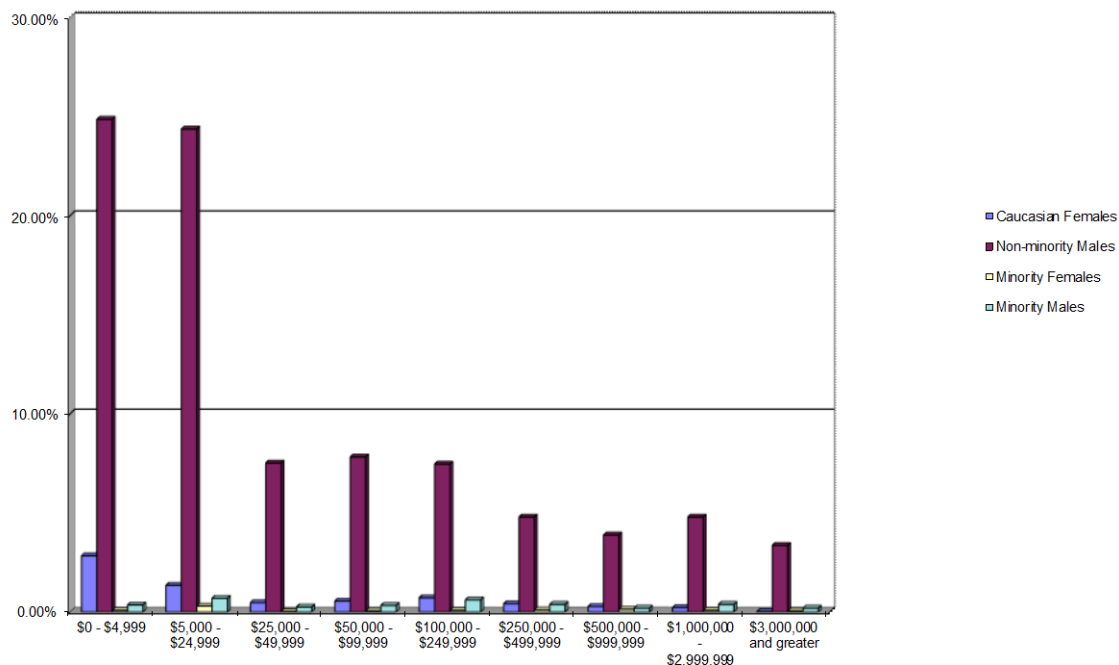


The data revealed that most of the prime contracts awarded by the County were small. Table 6.6 shows that 71.84% of the prime contracts awarded by the County were less than \$100,000. Additionally, 80.70% were less than \$250,000, 86.40% were less than \$500,000, 90.89% were less than \$1,000,000, and 96.37% were less than \$3,000,000. Only 3.63% of the awarded prime contracts were valued at \$3,000,000 and greater.

**Table 6.6: All Industry Contracts by Size,
July 1, 2012 to June 30, 2017**

Size	Non-minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$0 - \$4,999	103	2.84%	903	24.86%	3	0.08%	13	0.36%	1,022	28.13%
\$5,000 - \$24,999	49	1.35%	885	24.36%	11	0.30%	25	0.69%	970	26.70%
\$25,000 - \$49,999	17	0.47%	273	7.51%	1	0.03%	9	0.25%	300	8.26%
\$50,000 - \$99,999	20	0.55%	284	7.82%	2	0.06%	12	0.33%	318	8.75%
\$100,000 - \$249,999	26	0.72%	271	7.46%	3	0.08%	22	0.61%	322	8.86%
\$250,000 - \$499,999	15	0.41%	174	4.79%	4	0.11%	14	0.39%	207	5.70%
\$500,000 - \$999,999	10	0.28%	141	3.88%	5	0.14%	7	0.19%	163	4.49%
\$1,000,000 - \$2,999,999	8	0.22%	174	4.79%	3	0.08%	14	0.39%	199	5.48%
\$3,000,000 and greater	1	0.03%	122	3.36%	2	0.06%	7	0.19%	132	3.63%
Total	249	6.85%	3,227	88.82%	34	0.94%	123	3.39%	3,633	100.00%

**Chart 6.1: Formal Industry Contracts by Size,
July 1, 2012 to June 30, 2017**



The size of the County's prime contracts is a determinant of the capacity that a willing business needs to be competitive at the prime contract level. The fact that 71.84% of the County's contracts are less than \$100,000 illustrates that the capacity needed to perform a significant number of the County's contracts is not considerable.

B. Largest Prime Contracts Awarded to Minority and Woman Business Enterprises

Table 6.7 shows that MWBEs demonstrated the capacity to perform contracts as large as \$11,781,838 in construction, \$7,000,000 in architecture and engineering, \$1,912,524 in professional services, and \$12,172,835 in goods and services. The size of the largest prime contracts that the County awarded to MWBEs illustrates that these businesses have the capacity to perform substantial formal contracts.

Table 6.7: Largest Prime Contracts Awarded by Baltimore County to Minority and Woman Business Enterprises

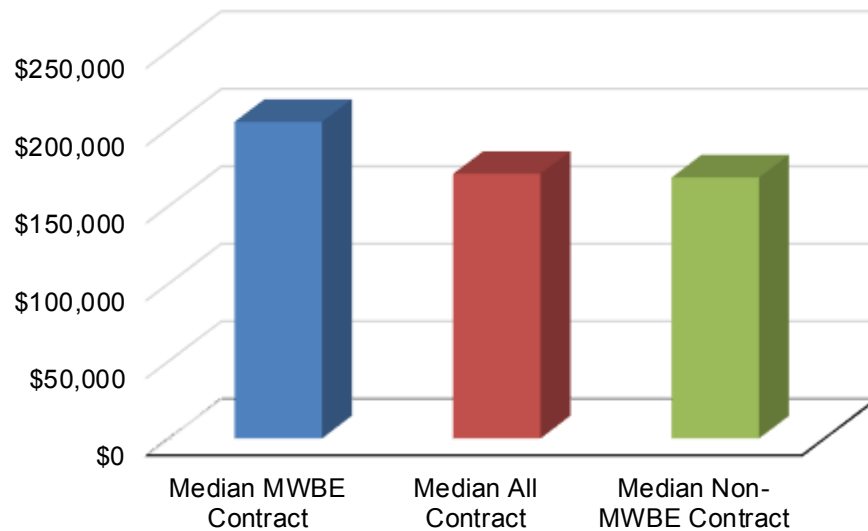
Ethnic/Gender Group	Construction	Architecture and Engineering Services	Professional Services	Goods and Services
African American Female	----	----	\$515,169	\$559,500
African American Male	\$1,671,373	\$5,280,680	\$428,224	\$1,193,632
Asian American Female	\$3,692,590	----	\$1,249,324	\$19,030
Asian American Male	----	\$7,000,000	\$1,351,775	\$2,003,708
Hispanic American Female	\$790,069	----	----	----
Hispanic American Male	\$11,781,838	----	----	\$2,413,033
Native American Female	----	----	----	----
Native American Male	----	----	----	----
Caucasian Female	\$1,842,229	\$443,104	\$1,912,524	\$12,172,835
Largest Dollar Amounts MBEs	\$11,781,838	\$7,000,000	\$1,351,775	\$2,413,033
Largest Dollar Amounts WBEs	\$3,692,590	\$443,104	\$1,912,524	\$12,172,835

C. Frequency Distribution

The County's formal contracts range from \$1,480 to \$76,806,996. A frequency distribution was calculated for all of the County's prime contracts to determine the median contract size. The same distribution was calculated separately for MWBEs and non-minority male-owned businesses. As shown in Chart 6.2, the median of all County prime contracts was \$170,628. This median or center point marks the value at which 50% of contracts were above and below \$170,628. The median prime contract awarded to MWBEs was \$204,163 and to non-minority male-owned businesses



**Chart 6.2: Formal Industry Contracts by Size,
July 1, 2012 to June 30, 2017**



This finding illustrates that MWBEs have the capacity to perform a significant number of the prime contracts awarded by the County. The fact also highlights that MWBEs have the capacity to perform very large contracts (Chart 6.2). It is also notable that there are other methods commonly used by prime contractors to increase their capacity in response to contract requirements. These practices include subcontracting, joint ventures, and staff augmentation.

D. Formal Contract Threshold Analysis

As a further measure to ensure that the available businesses have the capacity to perform the contracts analyzed in the disparity analysis, the prime contracts subject to the statistical analysis was limited. As discussed in *Chapter 3: Prime Contractor Utilization Analysis*, the analysis of formal contracts was limited to the awarded contracts with a dollar value within 1.5 times the interquartile range (IQR). The decision to limit the analysis of disparity to contracts within 1.5 times the IQR was made to eliminate outliers, which increased the reliability of the statistical findings, and reduced the business capacity requirements. Table 6.7 illustrates the contract distribution for each industry by percentile.

Table 6.8: Threshold Analysis by Size and Industry

Quantiles	All Industries Combined?	Construction	Architecture and Engineering Services	Professional Services	Goods and Services
Minimum	\$1,480	\$27,554	\$1,480	\$25,880	\$25,120
25%	\$59,617	\$227,390	\$163,732	\$53,800	\$51,019
50% Quantile	\$170,628	\$761,575	\$590,391	\$127,493	\$101,559
75% + 1.5*IQR	\$1,670,000	\$5,690,000	\$3,810,000	\$1,030,000	\$620,000
Maximum	\$76,806,996	\$76,806,996	\$21,686,794	\$7,998,126	\$16,616,631



E. Business Capacity Assessment

To ascertain the relative capacity of MWBEs and non-minority male-owned businesses enumerated in the availability analysis, an eSurvey was administered to the businesses in the availability dataset. The online survey was used to collect responses about independent business-related socioeconomic factors.

1. Profile of Respondents

Table 6.9 shows the ethnicity and gender of survey respondents. Of the business capacity survey respondents, 49.61% were African American; 7.87% were Asian American; 3.94% were Hispanic American; 0.79% were Native American; and 37.80% were Caucasian American. Of the surveys completed, 54.33% were completed by females of all ethnicities, and 45.67% were completed by males of all ethnicities.

Table 6.9: Ethnicity and Gender of Business Owners

Ethnicity and Gender	African American	Asian American	Hispanic American	Native American	Caucasian American	Total
Female	21.26%	0.79%	1.57%	0.79%	29.92%	54.33%
Male	28.35%	7.09%	2.36%	0.00%	7.87%	45.67%
Total	49.61%	7.87%	3.94%	0.79%	37.80%	100.00%

The ethnic groups were combined and analyzed as “minority males” and “minority females.” Table 6.10 shows that 23.62% of businesses provided construction services; 33.07% of businesses provided professional services; 15.75% of businesses provided architecture and engineering services; and 27.56% of businesses provided goods and services.

Table 6.10: Primary Industry of Business

Industry	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
Construction	6.30%	11.02%	3.94%	2.36%	23.62%
Professional Services	8.66%	11.81%	9.45%	3.15%	33.07%
Architecture and Engineering Services	3.15%	5.51%	7.09%	0.00%	15.75%
Goods and Services	6.30%	9.45%	9.45%	2.36%	27.56%
Total	24.41%	37.80%	29.92%	7.87%	100.00%

2. Capacity Assessment Findings

Table 6.11 shows business annual gross revenue. It shows that 57.84% of businesses earned \$500,000 and under; 9.80% of businesses earned \$500,001 to \$1,000,000; 13.73% of businesses earned \$1,000,001 to \$3,000,000; 9.80% of businesses earned \$3,000,001 to \$5,000,000; 5.88% of businesses earned \$5,000,001 to \$10,000,000; and 2.94% of businesses earned over \$10 million.



Table 6.11: Annual Gross Revenue

Revenue	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
Less than \$50,000	2.94%	6.86%	0.98%	1.96%	12.75%
\$50,000 to \$100,000	3.92%	1.96%	5.88%	0.00%	11.76%
\$100,001 to \$300,000	5.88%	5.88%	9.80%	0.98%	22.55%
\$300,001 to \$500,000	2.94%	3.92%	3.92%	0.00%	10.78%
\$500,001 to \$1,000,000	1.96%	3.92%	2.94%	0.98%	9.80%
\$1,000,001 to \$3,000,000	3.92%	7.84%	0.98%	0.98%	13.73%
\$3,000,001 to \$5,000,000	0.00%	3.92%	3.92%	1.96%	9.80%
\$5,000,001 to \$10,000,000	1.96%	1.96%	1.96%	0.00%	5.88%
More than \$10,000,000	0.00%	0.00%	0.00%	2.94%	2.94%
Total	23.53%	36.27%	30.39%	9.80%	100.00%

Chart 6.3 illustrates that most, or 67.65%, of businesses earn less than \$1,00,000 a year. This finding indicates that the majority of businesses are small, regardless of the ethnicity or gender of the owner.

Chart 6.3: Annual Gross Revenue

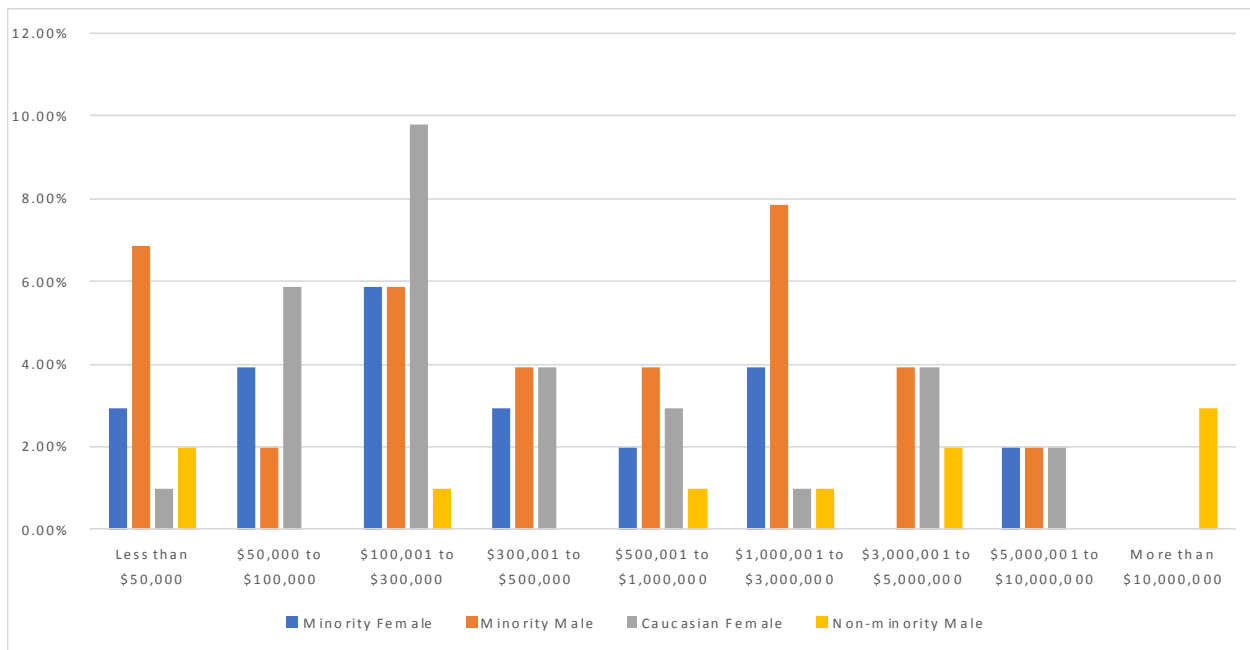


Table 6.12 shows the number of employees at each business. It shows 55.26% of business had 0 to 5 employees;²²³ 14.91% had 6 to 10 employees; 10.53% had 11 to 20 employees; 11.40% had 21 to 50 employees; and 7.89% had more than 50 employees.

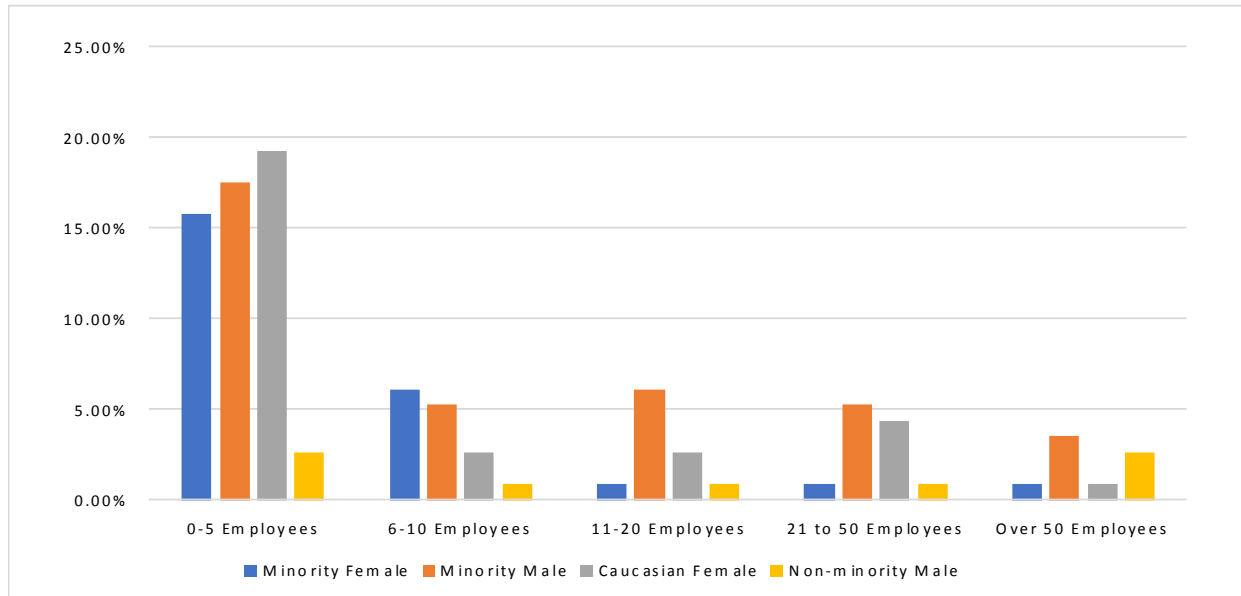
²²³ Business owners are not counted as employees.

Table 6.12: Number of Employees

Number of Employees	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
0-5 Employees	15.79%	17.54%	19.30%	2.63%	55.26%
6-10 Employees	6.14%	5.26%	2.63%	0.88%	14.91%
11-20 Employees	0.88%	6.14%	2.63%	0.88%	10.53%
21 to 50 Employees	0.88%	5.26%	4.39%	0.88%	11.40%
Over 50 Employees	0.88%	3.51%	0.88%	2.63%	7.89%
Total	24.56%	37.72%	29.82%	7.89%	100.00%

Chart 6.4 illustrates that most businesses are small, regardless of the ethnicity or gender of the owner. Of all businesses, 80.70% are small, employing 20 or fewer persons. Although the surveyed businesses are small, they are larger than the average State of Maryland business, as reported by the U.S. Census 2015 County Business Patterns. The U.S. Census reports that 84.76% of businesses, regardless of ethnicity and gender, in the State of Maryland employ 20 or fewer persons.²²⁴

Chart 6.4: Number of Employees



One consideration of capacity, as discussed in the case law, is a contractor's ability to bid and perform multiple contracts.²²⁵ This factor relates to the human and capital resources available to a business to perform multiple contracts concurrently. Table 6.13 shows that businesses can perform multiple concurrent contracts within a calendar year. Many business that responded have the capacity to complete more than one contract in a calendar year.



²²⁴ According to the 2015 SUSB Annual Data Tables by Establishment Industry.

²²⁵ See *Rothe Development Corporation v. U.S. Department of Defense*, 262 F.3d 1306 (Fed. Cir. 2001); see also *Rothe Development Corporation v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

Table 6.13: Number of Annual Contracts

Annual Contracts	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
1 to 5 Contracts	14.29%	14.29%	19.64%	0.00%	48.21%
6 to 10 Contracts	5.36%	14.29%	7.14%	1.79%	28.57%
11 to 20 Contracts	1.79%	1.79%	5.36%	0.00%	8.93%
More than 20 Contracts	1.79%	5.36%	3.57%	3.57%	14.29%
Total	23.21%	35.71%	35.71%	5.36%	100.00%

Chart 6.5 illustrates that most businesses performed multiple contracts within the previous calendar year. This finding illustrates that the businesses, without regard to ethnicity or gender, have successfully performed multiple contracts concurrently.

Chart 6.5: Number of Annual Contracts

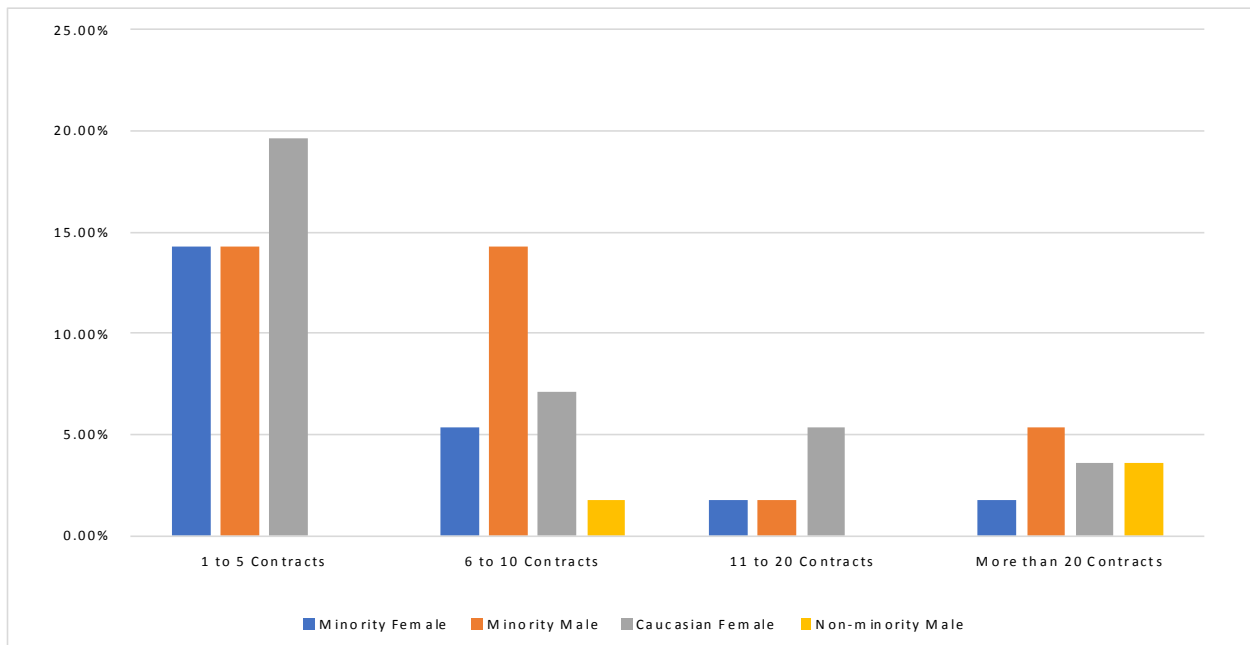


Table 6.14 shows a distribution of the length of time businesses have been in operation. A large proportion, or 57.03%, of minority-owned, woman-owned, and non-minority male-owned businesses are 11 to 50 years old, illustrating that there are mature businesses within the pool of available businesses. Nevertheless, no business owned by a minority is over 50 years old. This particular finding is expected, since public policy dictating affirmative action did not begin until the 1960s with the passage of the Civil Rights Act of 1964. The Civil Rights Act spawned Executive Order 11625 in 1971. However, this executive order applied to federally funded contracts and minimally affected local laws. Local government affirmative action policies were not accelerated until the promulgation of the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) regulations in 1983. The DBE regulations



require states, counties, cities, and transportation agencies to implement affirmative action contracting programs as a condition of USDOT funding.

Table 6.14: Years in Business

Years in Operation	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
Less than 5 years	5.79%	3.31%	0.83%	1.65%	11.57%
5 - 10 years	8.26%	8.26%	12.40%	1.65%	30.58%
11 - 20 years	6.61%	14.05%	6.61%	1.65%	28.93%
21 - 50 years	4.13%	9.92%	11.57%	2.48%	28.10%
More than 50 years	0.00%	0.00%	0.00%	0.83%	0.83%
Total	24.79%	35.54%	31.40%	8.26%	100.00%

Chart 6.6 illustrates that MWBEs are a growing segment of the contracting market. The fact that the availability pool includes mature MWBEs with extensive experience in their respective fields is significant.

Chart 6.6: Years in Business

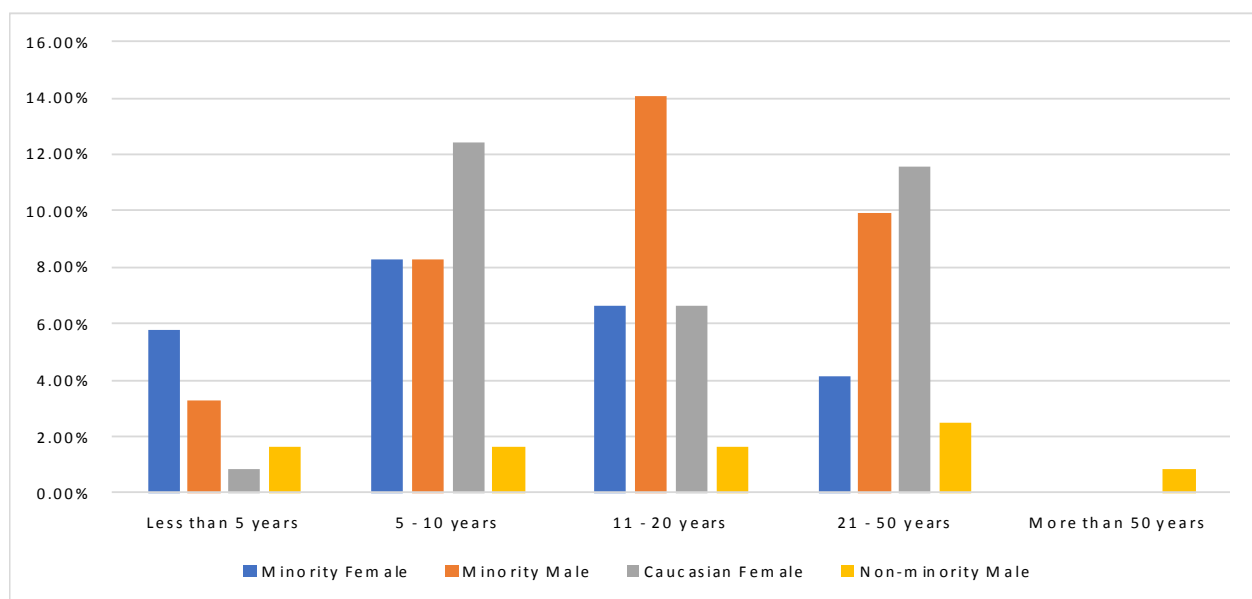


Table 6.15 shows the educational attainment of business owners. The data show that 71.77% of business owners have a bachelor's degree. Minority business owners earn higher education degrees at a higher rate than similarly situated non-minority males.

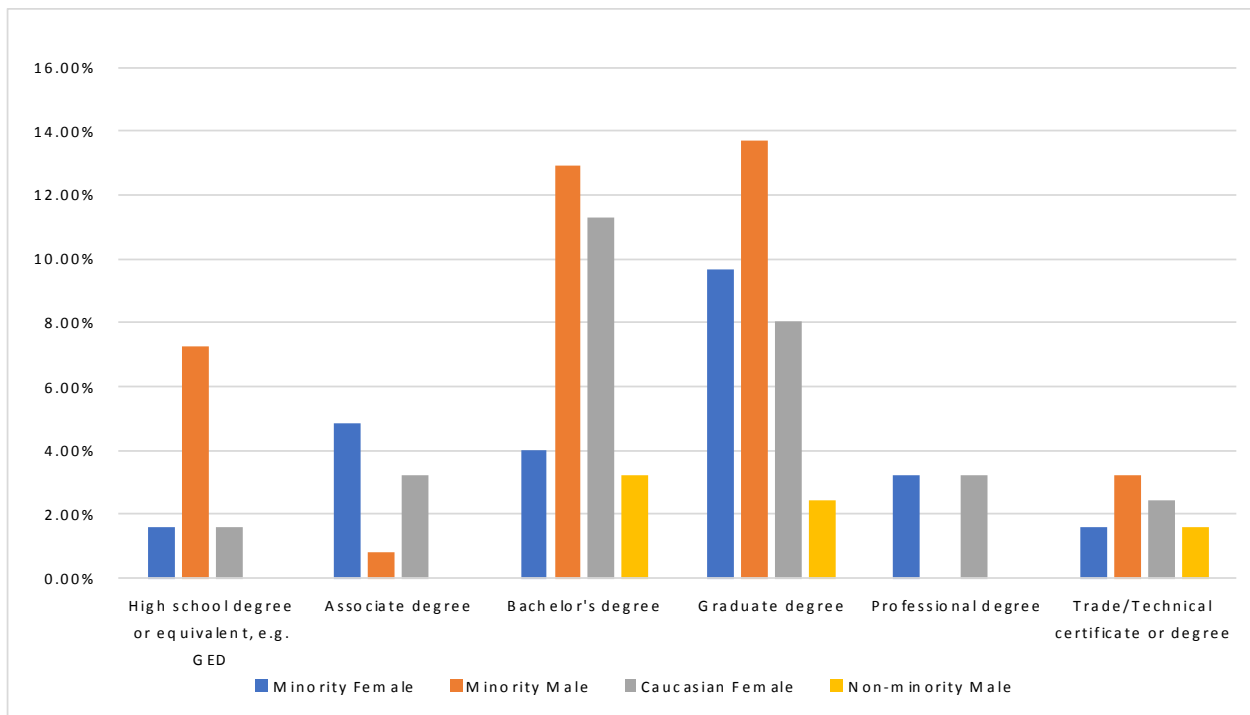


Table 6.15: Education Level of Business Owners

Education	Minority Female	Minority Male	Caucasian Female	Non-minority Male	Total
High school degree or equivalent, e.g. GED	1.61%	7.26%	1.61%	0.00%	10.48%
Associate degree	4.84%	0.81%	3.23%	0.00%	8.87%
Bachelor's degree	4.03%	12.90%	11.29%	3.23%	31.45%
Graduate degree	9.68%	13.71%	8.06%	2.42%	33.87%
Professional degree	3.23%	0.00%	3.23%	0.00%	6.45%
Trade/Technical certificate or degree	1.61%	3.23%	2.42%	1.61%	8.87%
Total	25.00%	37.90%	29.84%	7.26%	100.00%

Chart 6.7 illustrates that the most common degree among business owners is a bachelor's degree. This finding indicates that most business owners, regardless of ethnicity and gender, are educated past the high school level.

Chart 6.7: Educational Attainment



F. Conclusion

The analysis shows that among similarly situated MWBEs and non-minority male-owned businesses, the relative capacity of firms is comparable. Most businesses enumerated in the availability analysis have the following profile:

- Employ 10 or fewer persons
- Have gross revenue of \$1,000,000 or less
- Perform multiple public and private contracts concurrently
- Operated their business for less than 50 years
- Have a bachelor's or graduate degree

The results of the eSurvey is evidence that willing MWBEs have demonstrated capacity comparable to similarly situated non-minority male-owned businesses. Despite similar educational attainment, years in business, and number of employees, non-minority male-owned businesses still received most of the County's contracts as detailed in *Chapter 3: Prime Contractor Utilization Analysis*. The capacity evidence indicates that non-minority males are not awarded more contracts because of any single socioeconomic factor or combination of measures. The fact that non-minority males are awarded more contracts indicates discrimination in public and private-sector business practices.



IV. Prime Contractor Availability Analysis

The prime contractor availability analysis is based on the 2,121 willing market area businesses enumerated from the three availability sources described above. The availability of willing market area businesses is presented by ethnicity, gender, and industry in the sections below.

A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 6.9 below.

African Americans account for 27.47% of the construction prime contractors in the County's market area.

Asian Americans account for 5.13% of the construction prime contractors in the County's market area.

Hispanic Americans account for 12.45% of the construction prime contractors in the County's market area.

Native Americans account for 1.47% of the construction prime contractors in the County's market area.

Caucasian Females account for 12.82% of the construction prime contractors in the County's market area.

Non-minority Males account for 40.66% of the construction prime contractors in the County's market area.

Minority Business Enterprises account for 46.52% of the construction prime contractors in the County's market area.

Woman Business Enterprises account for 18.68% of the construction prime contractors in the County's market area.



**Table 6.16: Available Construction Prime Contractors,
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	27.47%
Asian Americans	5.13%
Hispanic Americans	12.45%
Native Americans	1.47%
Caucasian Females	12.82%
Non-minority Males	40.66%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	3.85%
African American Males	23.63%
Asian American Females	0.73%
Asian American Males	4.40%
Hispanic American Females	1.10%
Hispanic American Males	11.36%
Native American Females	0.18%
Native American Males	1.28%
Caucasian Females	12.82%
Non-minority Males	40.66%
TOTAL	
Minority and Females	Percent
Minority Business Enterprises	46.52%
Woman Business Enterprises	18.68%

B. *Architecture and Engineering Services Prime Contractor Availability*

The distribution of available architecture and engineering services prime contractors is summarized in Table 6.17 below.

African Americans account for 17.76% of the architecture and engineering services prime contractors in the County's market area.

Asian Americans account for 24.77% of the architecture and engineering services prime contractors in the County's market area.

Hispanic Americans account for 2.34% of the architecture and engineering services prime contractors in the County's market area.

Native Americans account for 0.93% of the architecture and engineering services prime contractors in the County's market area.

Caucasian Females account for 21.96% of the architecture and engineering services prime contractors in the County's market area.

Non-minority Males account for 32.24% of the architecture and engineering services prime contractors in the County's market area.

Minority Business Enterprises account for 45.79% of the architecture and engineering services prime contractors in the County's market area.

Woman Business Enterprises account for 29.91% of the architecture and engineering services prime contractors in the County's market area.



**Table 6.17: Available Architecture and Engineering Services Prime Contractors,
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	17.76%
Asian Americans	24.77%
Hispanic Americans	2.34%
Native Americans	0.93%
Caucasian Females	21.96%
Non-minority Males	32.24%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	4.21%
African American Males	13.55%
Asian American Females	3.27%
Asian American Males	21.50%
Hispanic American Females	0.47%
Hispanic American Males	1.87%
Native American Females	0.00%
Native American Males	0.93%
Caucasian Females	21.96%
Non-minority Males	32.24%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	45.79%
Woman Business Enterprises	29.91%



C. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 6.18 below.

African Americans account for 30.83% of the professional services prime contractors in the County's market area.

Asian Americans account for 11.13% of the professional services prime contractors in the County's market area.

Hispanic Americans account for 3.76% of the professional services prime contractors in the County's market area.

Native Americans account for 1.05% of the professional services prime contractors in the County's market area.

Caucasian Females account for 27.37% of the professional services prime contractors in the County's market area.

Non-minority Males account for 25.86% of the professional services prime contractors in the County's market area.

Minority Business Enterprises account for 46.77% of the professional services prime contractors in the County's market area.

Woman Business Enterprises account for 47.82% of the professional services prime contractors in the County's market area.



**Table 6.18: Available Professional Services Prime Contractors,
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	30.83%
Asian Americans	11.13%
Hispanic Americans	3.76%
Native Americans	1.05%
Caucasian Females	27.37%
Non-minority Males	25.86%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	14.44%
African American Males	16.39%
Asian American Females	3.76%
Asian American Males	7.37%
Hispanic American Females	1.80%
Hispanic American Males	1.95%
Native American Females	0.45%
Native American Males	0.60%
Caucasian Females	27.37%
Non-minority Males	25.86%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	46.77%
Woman Business Enterprises	47.82%



D. Goods and Services Prime Contractor Availability

The distribution of available goods and services prime contractors is summarized in Table 6.19 below.

African Americans account for 20.57% of the goods and services prime contractors in the County's market area.

Asian Americans account for 4.07% of the goods and services prime contractors in the County's market area.

Hispanic Americans account for 4.90% of the goods and services prime contractors in the County's market area.

Native Americans account for 0.24% of the goods and services prime contractors in the County's market area.

Caucasian Females account for 20.69% of the goods and services prime contractors in the County's market area.

Non-minority Males account for 49.52% of the goods and services prime contractors in the County's market area.

Minority Business Enterprises account for 29.78% of the goods and services prime contractors in the County's market area.

Woman Business Enterprises account for 29.43% of the goods and services prime contractors in the County's market area.



**Table 6.19: Available Goods and Services Prime Contractors,
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	20.57%
Asian Americans	4.07%
Hispanic Americans	4.90%
Native Americans	0.24%
Caucasian Females	20.69%
Non-minority Males	49.52%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	5.62%
African American Males	14.95%
Asian American Females	0.60%
Asian American Males	3.47%
Hispanic American Females	2.27%
Hispanic American Males	2.63%
Native American Females	0.24%
Native American Males	0.00%
Caucasian Females	20.69%
Non-minority Males	49.52%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	29.78%
Woman Business Enterprises	29.43%



V. Subcontractor Availability Analysis

A. Source of Willing and Able Subcontractors

All available prime contractors were included in the calculation of the subcontractor availability. Additional subcontractors in the County's market area were identified using the source in Table 6.20.

Subcontractor availability was not calculated for the goods and other services, as the subcontracting activity in that industry was limited.

Table 6.20: Unique Subcontractor Availability Data Source

Type Record	Type Information
Subcontract awards provided by Baltimore County	MWBEs and non-minority males

B. Determination of Willingness and Capacity

Subcontractor availability was limited to the utilized prime contractors and the unique businesses utilized as subcontractors. Therefore, the determination of willingness and capacity was achieved. Furthermore, *Croson* does not require a separate measure of subcontractor capacity in the analysis of subcontractor availability.



C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 6.16 below.

African Americans account for 26.05% of the construction subcontractors in the County's market area.

Asian Americans account for 7.82% of the construction subcontractors in the County's market area.

Hispanic Americans account for 5.55% of the construction subcontractors in the County's market area.

Native Americans account for 0.79% of the construction subcontractors in the County's market area.

Caucasian Females account for 19.62% of the construction subcontractors in the County's market area.

Non-minority Males account for 40.17% of the construction subcontractors in the County's market area.

Minority Business Enterprises account for 40.21% of the construction subcontractors in the County's market area.

Woman Business Enterprises account for 31.08% of the construction subcontractors in the County's market area.



**Table 6.21: Available Construction Subcontractors
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	26.05%
Asian Americans	7.82%
Hispanic Americans	5.55%
Native Americans	0.79%
Caucasian Females	19.62%
Non-minority Males	40.17%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	7.91%
African American Males	18.14%
Asian American Females	1.79%
Asian American Males	6.03%
Hispanic American Females	1.53%
Hispanic American Males	4.02%
Native American Females	0.22%
Native American Males	0.57%
Caucasian Females	19.62%
Non-minority Males	40.17%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	40.21%
Woman Business Enterprises	31.08%

D. Architecture, Engineering, and Professional Services Subcontractor Availability

The distribution of available architecture, engineering, and professional services subcontractors is summarized in Table 6.22 below.

African Americans account for 26.69% of the architecture, engineering, and professional services subcontractors in the County's market area.

Asian Americans account for 8.62% of the architecture, engineering, and professional services subcontractors in the County's market area.

Hispanic Americans account for 5.90% of the architecture, engineering, and professional services subcontractors in the County's market area.

Native Americans account for 0.77% of the architecture, engineering, and professional services subcontractors in the County's market area.

Caucasian Females account for 21.51% of the architecture, engineering, and professional services subcontractors in the County's market area.

Non-minority Males account for 36.50% of the architecture, engineering, and professional services subcontractors in the County's market area.

Minority Business Enterprises account for 41.99% of the construction subcontractors in the County's market area.

Woman Business Enterprises account for 33.37% of the construction subcontractors in the County's market area



**Table 6.22: Available Architecture and Engineering Subcontractors
July 1, 2012 to June 30, 2017**

Ethnicity	Percent of Businesses
African Americans	26.69%
Asian Americans	8.62%
Hispanic Americans	5.90%
Native Americans	0.77%
Caucasian Females	21.51%
Non-minority Males	36.50%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	8.26%
African American Males	18.43%
Asian American Females	2.00%
Asian American Males	6.62%
Hispanic American Females	1.44%
Hispanic American Males	4.47%
Native American Females	0.15%
Native American Males	0.62%
Caucasian Females	21.51%
Non-minority Males	36.50%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	41.99%
Woman Business Enterprises	33.37%



VI. Summary

This chapter presented the enumeration of willing and able market area businesses by ethnicity, gender, and industry. The capacity of the enumerated businesses was assessed using four methods. They included 1) A review of the County's contract size distribution, to identify the capacity needed to perform most of the County contracts; 2) A determination of the largest contracts the Baltimore County awarded to MWBEs; 3) A frequency distribution that defined the median size of contracts awarded to both MWBE and non-minority males; 4) A threshold analysis that defined the formal contracts within the 75th percentile in order to eliminate outliers and increase the reliability of the statistical findings; and 5) A business capacity analysis that assessed relevant socioeconomic factors in the private sector affecting business formation and revenue.

The findings from these analyses illustrate that MWBEs have a socioeconomic profile comparable to similarly situated Caucasian male-owned businesses, and the capacity to perform large Baltimore County contracts. Minority Business Enterprises account for 40.88% of construction, architecture and engineering services, professional services, and goods and services prime contractors, Caucasian female-owned businesses account for 32.39%, and non-minority male-owned businesses account for 38.52%.

Minority Business Enterprises account for 39.99% of construction, architecture and engineering services, professional services, and goods and services subcontractors. Caucasian female-owned businesses account for 30.98%, and non-minority male-owned business account for 40.38%



CHAPTER 7: Prime Contract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available MWBE contractors were underutilized on Baltimore County prime contracts during the July 1, 2012 to June 30, 2017 study period. Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to MWBEs should be relatively close to the corresponding proportion of available MWBEs²²⁶ in the relevant market area. If the ratio of utilized MWBE prime contractors compared to available MWBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio. This analysis assumes a fair and equitable system.²²⁷ *City of Richmond v. J.A. Croson Co. (Croson)*²²⁸ states that an inference of discrimination can be made if the disparity is statistically significant. Under the *Croson* standard, non-minority male-owned business enterprises (non-MWBEs) are not subjected to a statistical test of underutilization.

The first step in conducting the statistical test is to calculate the contract dollars that each ethnic and gender group is expected to receive. This value is based on each group's availability in the market area and shall be referred to as the **expected contract amount**. The next step is to compute the ratio between each ethnic and gender group's expected contract amount and the **actual contract amount** received by each group. This **disparity ratio** is computed by dividing the actual contract amount by the expected contract amount.

If the disparity ratio is found to be less than one (1), where the expected contract amount exceeds the actual contract amount, tests of statistical significance are performed. For parametric and non-parametric analyses, the p-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a p-value equal to or less than 0.05, the difference is statistically significant.²²⁹

In the simulation analysis, the p-value takes into account a combination of the distribution formulated from the empirical data and the contract dollar amounts. If the actual contract dollar amount, or actual contract rank, falls below the fifth percentile of the distribution, it denotes a p-value less than 0.05.

²²⁶ Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 6: Prime Contractor and Subcontractor Availability Analysis.

²²⁷ When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100-percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95-percent confidence level is the statistical standard used in physical and social sciences, and is thus used in the present report to determine if an inference of discrimination can be made.

²²⁸ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²²⁹ This study does not statistically test the overutilization of minority or gender groups or the underutilization of non-minority males.



If the p-value from any one of the three methods is less than 0.05, the finding is reported in the disparity tables as statistically significant. If the p-value is greater than 0.05, the finding is reported as not statistically significant.

II. Disparity Analysis

A prime contract disparity analysis was performed on the contracts awarded in the construction, architecture and engineering services, professional services, and goods and services industries during the July 1, 2012 to June 30, 2017 study period. The informal thresholds were defined according to the County's procurement policies. The informal thresholds for each industry are listed in Table 7.1.

Table 7.1: Informal Thresholds for Analysis by Industry

Industry	Contract Threshold
Construction	\$25,000 and under
Architecture and Engineering Services	No informal threshold
Professional Services	\$25,000 and under
Goods and Services	\$25,000 and under

For the formal contract analysis, the thresholds utilized in each industry were derived from a statistical analysis, which calculated the contract values that would skew the disparity analysis. To determine which contracts were outliers, the 1.5 x IQR rule was applied to the prime contracts in each of the four industries. Outliers over the threshold were removed for each industry. The statistical analysis performed to define the formal contract thresholds analyzed is discussed in *Chapter 3: Prime Contractor Utilization Analysis*. The formal contract thresholds for each industry are listed in Table 7.2.

Table 7.2: Formal Contract Thresholds for Analysis by Industry

Industry	Contract Threshold
Construction	Over \$25,000 and under \$5,690,000
Architecture and Engineering Services	Under \$3,810,000
Professional Services	Over \$25,000 and under \$1,030,000
Goods and Services	Over \$25,000 and under \$620,000



The findings from the methods employed to calculate statistical significance, as discussed on page 7-1, are presented in the subsequent sections. The outcomes of the statistical analyses are presented in the “p-value” column of the tables. A description of these statistical outcomes, as shown in the disparity tables, is presented below in Table 7.3.

Table 7.3: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< .05 *	This underutilization is statistically significant.
not significant	<ul style="list-style-type: none"> • MWBEs: this underutilization is not statistically significant. • Non-minority males: this overutilization is not statistically significant.
< .05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not statistically test the overutilization of minority or gender groups or the underutilization of non-minority males.



A. *Disparity Analysis: Informal Prime Contracts by Industry*

1. Construction Prime Contracts Valued at \$25,000 and under

The disparity analysis of construction prime contracts valued at \$25,000 and under is described below and shown in Table 7.4 and Chart 7.1.

African Americans represent 27.47% of the available construction businesses and received 1.92% of the dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 5.13% of the available construction businesses and received 0.00% of the dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 12.45% of the available construction businesses and received 1.76% of the dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 1.47% of the available construction businesses and received 0.00% of the dollars on construction contracts valued at \$25,000 and under. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 12.82% of the available construction businesses and received 6.40% of the dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.

Non-minority Males represent 40.66% of the available construction businesses and received 89.92% of dollars on construction contracts valued at \$25,000 and under. This overutilization is statistically significant.

Minority-owned Businesses represent 46.52% of the available construction businesses and received 3.68% of dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.

Woman-owned Businesses represent 18.68% of the available construction businesses and received 6.89% of dollars on construction contracts valued at \$25,000 and under. This underutilization is statistically significant.



**Table 7.4: Disparity Analysis: Construction Prime Contracts Valued at \$25,000 and under,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$19,820	1.92%	27.47%	\$283,224	-\$263,405	0.07	< .05 *
Asian Americans	\$0	0.00%	5.13%	\$52,869	-\$52,869	0.00	< .05 *
Hispanic Americans	\$18,155	1.76%	12.45%	\$128,395	-\$110,240	0.14	< .05 *
Native Americans	\$0	0.00%	1.47%	\$15,105	-\$15,105	0.00	----
Caucasian Females	\$65,978	6.40%	12.82%	\$132,171	-\$66,193	0.50	< .05 *
Non-minority Males	\$926,983	89.92%	40.66%	\$419,172	\$507,811	2.21	< .05 †
TOTAL	\$1,030,936	100.00%	100.00%	\$1,030,936			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.85%	\$39,651	-\$39,651	0.00	< .05 *
African American Males	\$19,820	1.92%	23.63%	\$243,573	-\$223,753	0.08	< .05 *
Asian American Females	\$0	0.00%	0.73%	\$7,553	-\$7,553	0.00	----
Asian American Males	\$0	0.00%	4.40%	\$45,316	-\$45,316	0.00	< .05 *
Hispanic American Females	\$5,006	0.49%	1.10%	\$11,329	-\$6,323	0.44	not significant
Hispanic American Males	\$13,150	1.28%	11.36%	\$117,066	-\$103,916	0.11	< .05 *
Native American Females	\$0	0.00%	0.18%	\$1,888	-\$1,888	0.00	----
Native American Males	\$0	0.00%	1.28%	\$13,217	-\$13,217	0.00	----
Caucasian Females	\$65,978	6.40%	12.82%	\$132,171	-\$66,193	0.50	< .05 *
Non-minority Males	\$926,983	89.92%	40.66%	\$419,172	\$507,811	2.21	< .05 †
TOTAL	\$1,030,936	100.00%	100.00%	\$1,030,936			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$37,975	3.68%	46.52%	\$479,593	-\$441,618	0.08	< .05 *
Woman Business Enterprises	\$70,983	6.89%	18.68%	\$192,592	-\$121,609	0.37	< .05 *

(*) denotes a statistically significant underutilization.

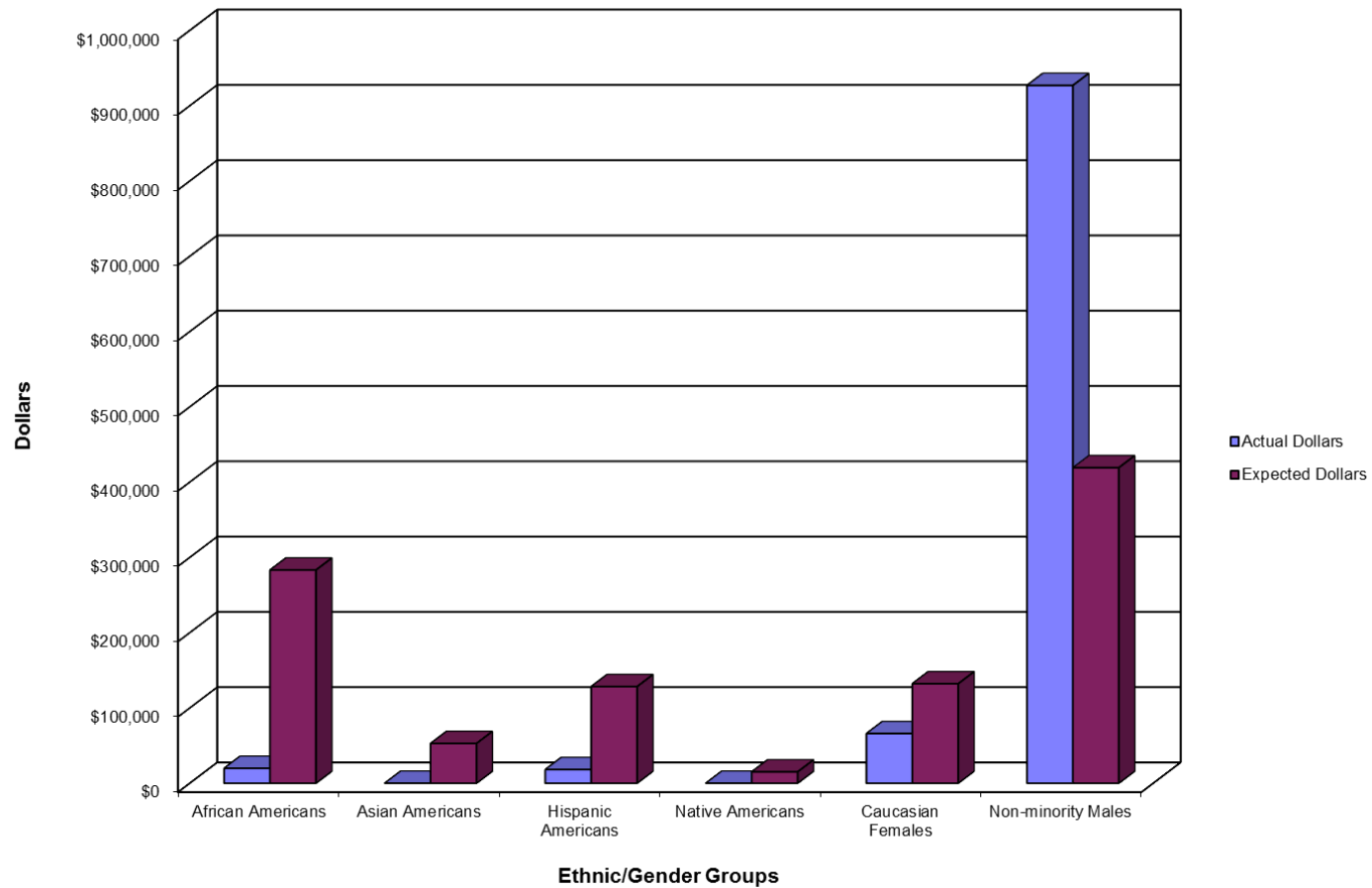
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.1: Disparity Analysis: Construction Prime Contracts Valued at \$25,000 and under,
July 1, 2012 to June 30, 2017**



2. Professional Services Prime Contracts Valued at \$25,000 and under

The disparity analysis of professional services prime contracts valued at \$25,000 and under is described below and shown in Table 7.5 and Chart 7.2.

African Americans represent 30.83% of the available professional services businesses and received 0.01% of the dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 11.13% of the available professional services businesses and received 5.17% of the dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 3.76% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 1.05% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued at \$25,000 and under. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 27.37% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Non-minority Males represent 25.86% of the available professional services businesses and received 94.83% of dollars on professional services contracts valued at \$25,000 and under. This overutilization is statistically significant.

Minority-owned Businesses represent 46.77% of the available professional services businesses and received 5.17% of dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Woman-owned Businesses represent 47.82% of the available professional services businesses and received 1.60% of dollars on professional services contracts valued at \$25,000 and under. This underutilization is statistically significant.



**Table 7.5: Disparity Analysis: Professional Services Prime Contracts Valued at \$25,000 and under,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$90	0.01%	30.83%	\$456,832	-\$456,742	0.00	< .05 *
Asian Americans	\$76,584	5.17%	11.13%	\$164,905	-\$88,321	0.46	< .05 *
Hispanic Americans	\$0	0.00%	3.76%	\$55,711	-\$55,711	0.00	< .05 *
Native Americans	\$0	0.00%	1.05%	\$15,599	-\$15,599	0.00	----
Caucasian Females	\$0	0.00%	27.37%	\$405,578	-\$405,578	0.00	< .05 *
Non-minority Males	\$1,405,245	94.83%	25.86%	\$383,293	\$1,021,952	3.67	< .05 †
TOTAL	\$1,481,919	100.00%	100.00%	\$1,481,919			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$90	0.01%	14.44%	\$213,931	-\$213,841	0.00	< .05 *
African American Males	\$0	0.00%	16.39%	\$242,901	-\$242,901	0.00	< .05 *
Asian American Females	\$23,609	1.59%	3.76%	\$55,711	-\$32,102	0.42	not significant
Asian American Males	\$52,975	3.57%	7.37%	\$109,194	-\$56,219	0.49	< .05 *
Hispanic American Females	\$0	0.00%	1.80%	\$26,741	-\$26,741	0.00	----
Hispanic American Males	\$0	0.00%	1.95%	\$28,970	-\$28,970	0.00	< .05 *
Native American Females	\$0	0.00%	0.45%	\$6,685	-\$6,685	0.00	----
Native American Males	\$0	0.00%	0.60%	\$8,914	-\$8,914	0.00	----
Caucasian Females	\$0	0.00%	27.37%	\$405,578	-\$405,578	0.00	< .05 *
Non-minority Males	\$1,405,245	94.83%	25.86%	\$383,293	\$1,021,952	3.67	< .05 †
TOTAL	\$1,481,919	100.00%	100.00%	\$1,481,919			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$76,674	5.17%	46.77%	\$693,048	-\$616,374	0.11	< .05 *
Woman Business Enterprises	\$23,699	1.60%	47.82%	\$708,647	-\$684,948	0.03	< .05 *

(*) denotes a statistically significant underutilization.

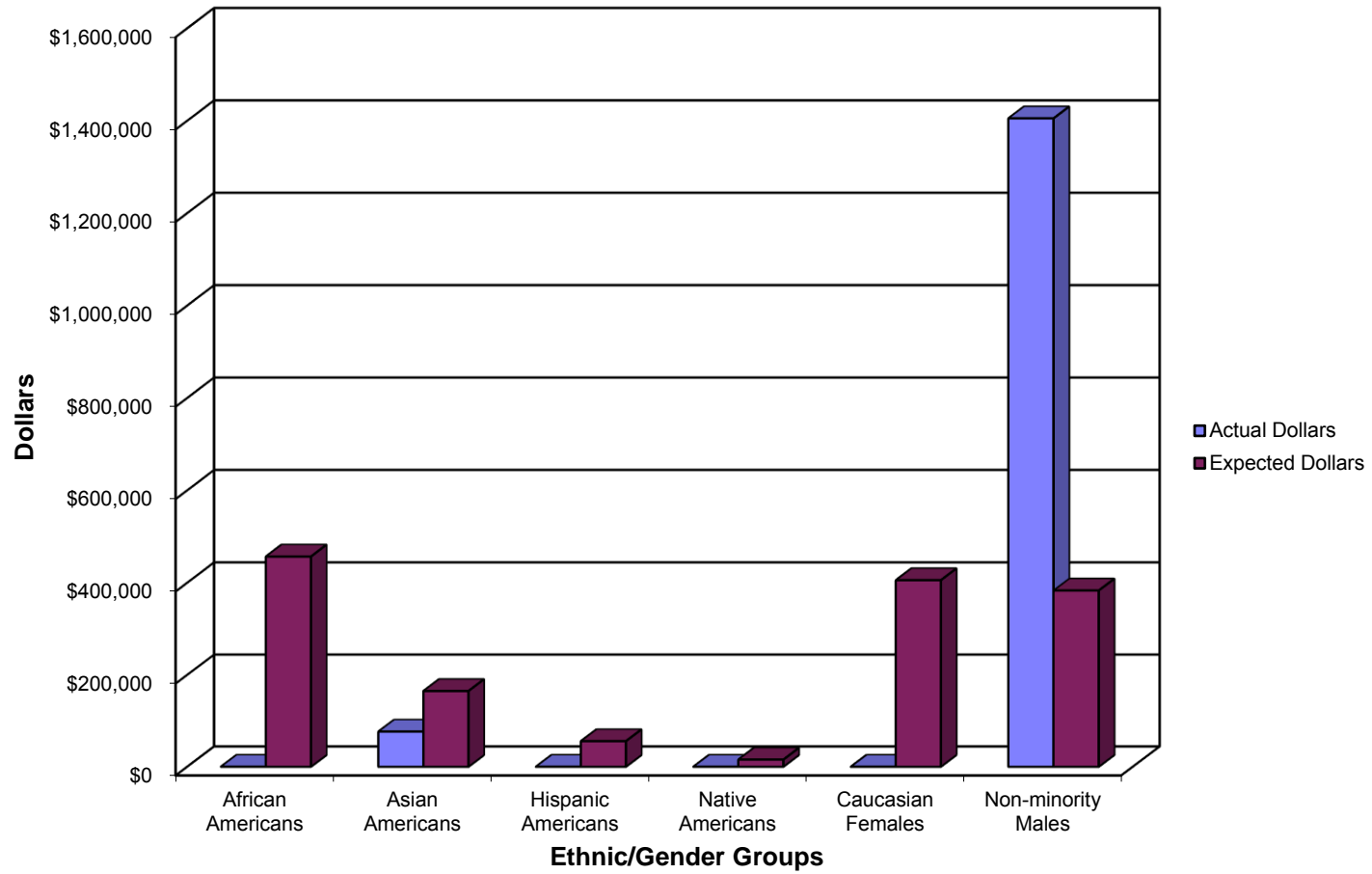
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.2: Disparity Analysis: Professional Services Prime Contracts Valued \$25,000 and Under,
July 1, 2012 to June 30, 2017**



3. Goods and Services Prime Contracts Valued at \$25,000 and under

The disparity analysis of goods and services prime contracts valued at \$25,000 and under is described below and shown in Table 7.6 and Chart 7.3.

African Americans represent 20.57% of the available goods and services businesses and received 1.48% of the dollars on goods and services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 4.07% of the available goods and services businesses and received 1.74% of the dollars on goods and services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 4.90% of the available goods and services businesses and received 0.21% of the dollars on goods and services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 0.24% of the available goods and services businesses and received 0.00% of the dollars on goods and services contracts valued at \$25,000 and under. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 20.69% of the available goods and services businesses and received 6.21% of the dollars on goods and services contracts valued at \$25,000 and under. This underutilization is statistically significant.

Non-minority Males represent 49.52% of the available goods and services businesses and received 90.36% of dollars on goods and services valued at \$25,000 and under. This overutilization is statistically significant.

Minority-owned Businesses represent 29.78% of the available goods and services businesses and received 3.43% of dollars on goods and services valued at \$25,000 and under. This underutilization is statistically significant.

Woman-owned Businesses represent 29.43% of the available goods and services businesses and received 7.26% of dollars on goods and services valued at \$25,000 and under. This underutilization is statistically significant.



**Table 7.6: Disparity Analysis: Goods and Services Prime Contracts Valued at \$25,000 and under,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$178,314	1.48%	20.57%	\$2,486,816	-\$2,308,502	0.07	< .05 *
Asian Americans	\$210,610	1.74%	4.07%	\$491,580	-\$280,970	0.43	< .05 *
Hispanic Americans	\$25,753	0.21%	4.90%	\$592,788	-\$567,034	0.04	< .05 *
Native Americans	\$0	0.00%	0.24%	\$28,916	-\$28,916	0.00	----
Caucasian Females	\$750,329	6.21%	20.69%	\$2,501,274	-\$1,750,945	0.30	< .05 *
Non-minority Males	\$10,922,075	90.36%	49.52%	\$5,985,708	\$4,936,367	1.82	< .05 †
TOTAL	\$12,087,082	100.00%	100.00%	\$12,087,082			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$79,748	0.66%	5.62%	\$679,537	-\$599,789	0.12	< .05 *
African American Males	\$98,566	0.82%	14.95%	\$1,807,279	-\$1,708,713	0.05	< .05 *
Asian American Females	\$47,769	0.40%	0.60%	\$72,291	-\$24,522	0.66	----
Asian American Males	\$162,841	1.35%	3.47%	\$419,289	-\$256,447	0.39	< .05 *
Hispanic American Females	\$0	0.00%	2.27%	\$274,706	-\$274,706	0.00	< .05 *
Hispanic American Males	\$25,753	0.21%	2.63%	\$318,081	-\$292,328	0.08	< .05 *
Native American Females	\$0	0.00%	0.24%	\$28,916	-\$28,916	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$750,329	6.21%	20.69%	\$2,501,274	-\$1,750,945	0.30	< .05 *
Non-minority Males	\$10,922,075	90.36%	49.52%	\$5,985,708	\$4,936,367	1.82	< .05 †
TOTAL	\$12,087,082	100.00%	100.00%	\$12,087,082			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$414,678	3.43%	29.78%	\$3,600,100	-\$3,185,422	0.12	< .05 *
Woman Business Enterprises	\$877,846	7.26%	29.43%	\$3,556,725	-\$2,678,879	0.25	< .05 *

(*) denotes a statistically significant underutilization.

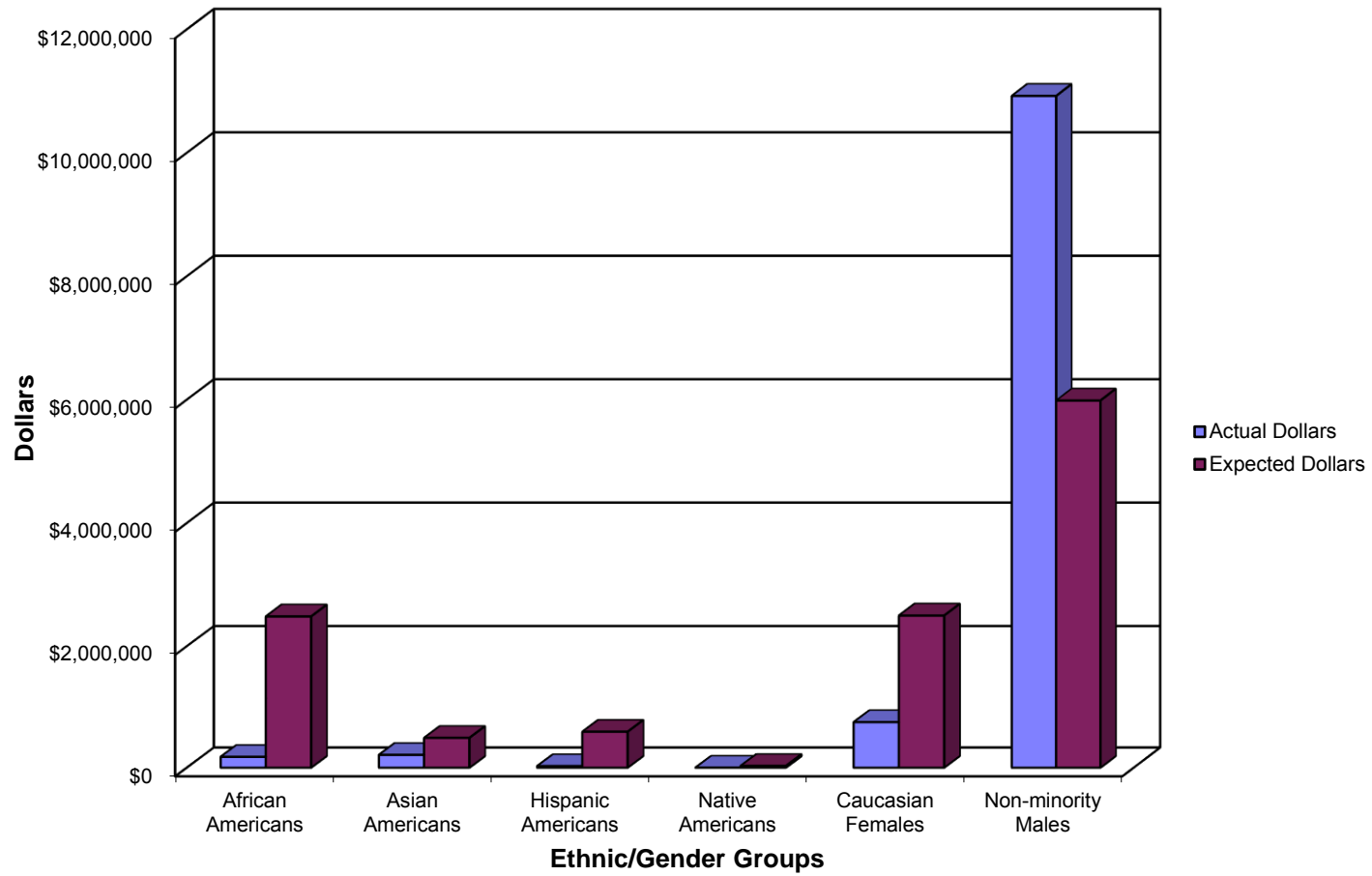
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.3: Disparity Analysis: Goods and Services Prime Contracts Valued at \$25,000 and under,
July 1, 2012 to June 30, 2017**



B. Disparity Analysis: Formal Prime Contracts by Industry

1. Construction Prime Contracts Valued at over \$25,000 and under \$5,690,000

The disparity analysis of construction prime contracts valued at over \$25,000 and less than \$5,690,000 is described below and shown in Table 7.7 and Chart 7.4.

African Americans represent 27.47% of the available construction businesses and received 2.24% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Asian Americans represent 5.13% of the available construction businesses and received 3.16% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Hispanic Americans represent 12.45% of the available construction businesses and received 7.12% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Native Americans represent 1.47% of the available construction businesses and received 0.00% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Caucasian Females represent 12.82% of the available construction businesses and received 3.16% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Non-minority Males represent 40.66% of the available construction businesses and received 84.33% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This overutilization is statistically significant.

Minority-owned Businesses represent 46.52% of the available construction businesses and received 12.51% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.

Woman-owned Businesses represent 18.68% of the available construction businesses and received 7.04% of the dollars on construction contracts valued at over \$25,000 and under \$5,690,000. This underutilization is statistically significant.



**Table 7.7: Disparity Analysis: Construction Prime Contracts Valued at over \$25,000 and under \$5,690,000,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$8,088,233	2.24%	27.47%	\$99,337,069	-\$91,248,836	0.08	< .05 *
Asian Americans	\$11,410,919	3.16%	5.13%	\$18,542,920	-\$7,132,000	0.62	< .05 *
Hispanic Americans	\$25,739,490	7.12%	12.45%	\$45,032,805	-\$19,293,314	0.57	< .05 *
Native Americans	\$0	0.00%	1.47%	\$5,297,977	-\$5,297,977	0.00	< .05 *
Caucasian Females	\$11,411,157	3.16%	12.82%	\$46,357,299	-\$34,946,142	0.25	< .05 *
Non-minority Males	\$304,937,132	84.33%	40.66%	\$147,018,862	\$157,918,270	2.07	< .05 †
TOTAL	\$361,586,932	100.00%	100.00%	\$361,586,932			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.85%	\$13,907,190	-\$13,907,190	0.00	< .05 *
African American Males	\$8,088,233	2.24%	23.63%	\$85,429,879	-\$77,341,646	0.09	< .05 *
Asian American Females	\$11,410,919	3.16%	0.73%	\$2,648,989	\$8,761,931	4.31	**
Asian American Males	\$0	0.00%	4.40%	\$15,893,931	-\$15,893,931	0.00	< .05 *
Hispanic American Females	\$2,639,963	0.73%	1.10%	\$3,973,483	-\$1,333,520	0.66	not significant
Hispanic American Males	\$23,099,527	6.39%	11.36%	\$41,059,322	-\$17,959,795	0.56	< .05 *
Native American Females	\$0	0.00%	0.18%	\$662,247	-\$662,247	0.00	----
Native American Males	\$0	0.00%	1.28%	\$4,635,730	-\$4,635,730	0.00	< .05 *
Caucasian Females	\$11,411,157	3.16%	12.82%	\$46,357,299	-\$34,946,142	0.25	< .05 *
Non-minority Males	\$304,937,132	84.33%	40.66%	\$147,018,862	\$157,918,270	2.07	< .05 †
TOTAL	\$361,586,932	100.00%	100.00%	\$361,586,932			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$45,238,643	12.51%	46.52%	\$168,210,770	-\$122,972,128	0.27	< .05 *
Woman Business Enterprises	\$25,462,040	7.04%	18.68%	\$67,549,207	-\$42,087,167	0.38	< .05 *

(*) denotes a statistically significant underutilization.

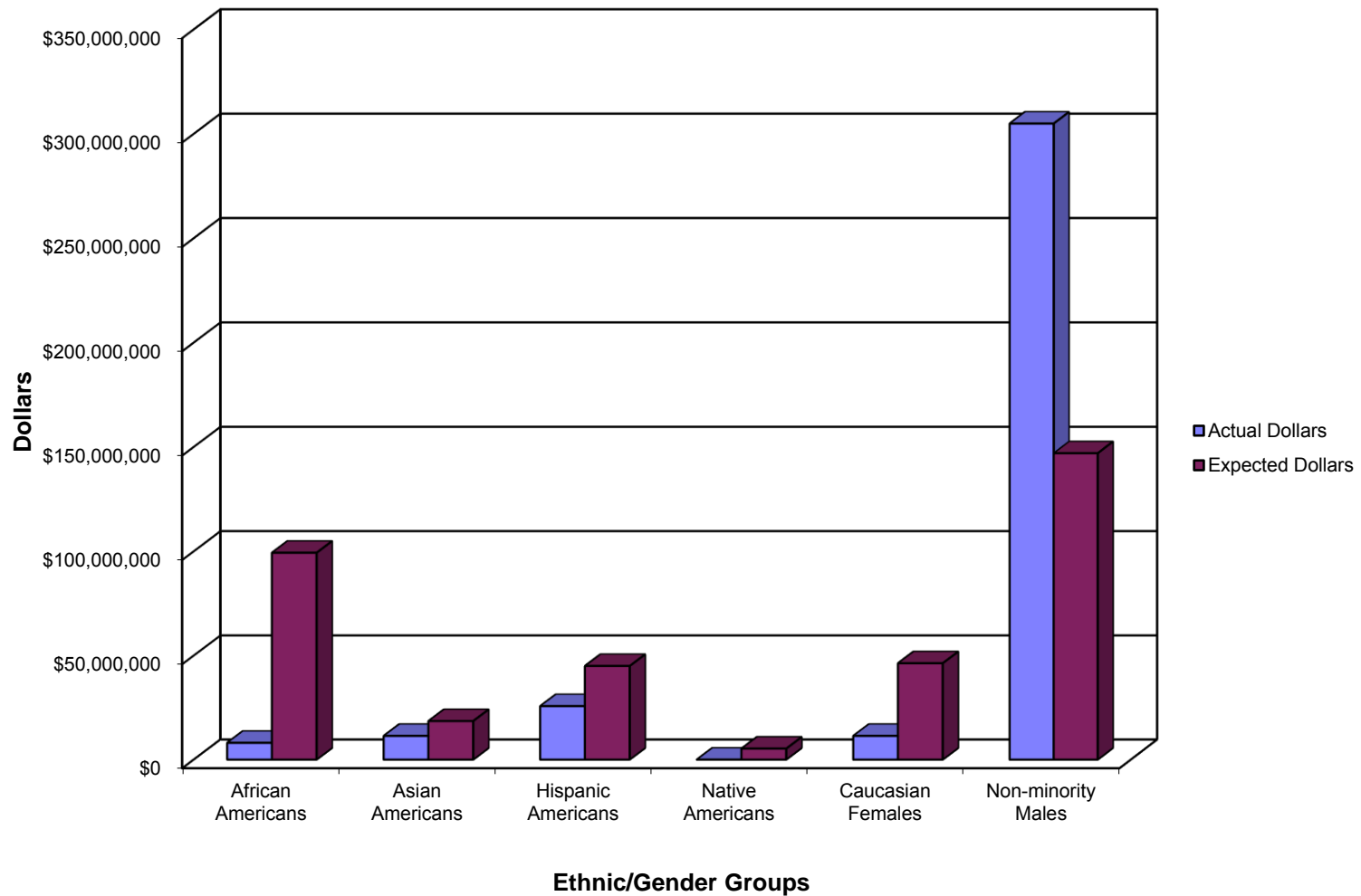
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M W B E s or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.4: Disparity Analysis: Construction Prime Contracts Valued Over \$25,000 and Under \$5,690,000,
July 1, 2012 to June 30, 2017**



2. Architecture and Engineering Services Prime Contracts Valued at under \$3,810,000

The disparity analysis of architecture and engineering services prime contracts valued at under \$3,810,000 is described below and shown in Table 7.8 and Chart 7.5.

African Americans represent 17.76% of the available architecture and engineering services businesses and received 1.52% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.

Asian Americans represent 24.77% of the available architecture and engineering services businesses and received 0.05% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.

Hispanic Americans represent 2.34% of the available architecture and engineering services businesses and received 0.00% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.

Native Americans represent 0.93% of the available architecture and engineering services businesses and received 0.00% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 21.96% of the available architecture and engineering services businesses and received 0.69% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.

Non-minority Males represent 32.24% of the available architecture and engineering services businesses and received 97.74% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This overutilization is statistically significant.

Minority-owned Businesses represent 45.79% of the available architecture and engineering services businesses and received 1.57% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.

Woman-owned Businesses represent 29.91% of the available architecture and engineering services businesses and received 0.69% of the dollars on architecture and engineering services contracts valued at under \$3,810,000. This underutilization is statistically significant.



**Table 7.8: Disparity Analysis: Architecture and Engineering Services Prime Contracts Valued at under \$3,810,000,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,905,168	1.52%	17.76%	\$22,283,349	-\$20,378,181	0.09	< .05 *
Asian Americans	\$64,408	0.05%	24.77%	\$31,079,408	-\$31,015,000	0.00	< .05 *
Hispanic Americans	\$0	0.00%	2.34%	\$2,932,020	-\$2,932,020	0.00	< .05 *
Native Americans	\$0	0.00%	0.93%	\$1,172,808	-\$1,172,808	0.00	----
Caucasian Females	\$862,101	0.69%	21.96%	\$27,560,984	-\$26,698,883	0.03	< .05 *
Non-minority Males	\$122,658,763	97.74%	32.24%	\$40,461,871	\$82,196,892	3.03	< .05 †
TOTAL	\$125,490,440	100.00%	100.00%	\$125,490,440			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	4.21%	\$5,277,635	-\$5,277,635	0.00	< .05 *
African American Males	\$1,905,168	1.52%	13.55%	\$17,005,714	-\$15,100,546	0.11	< .05 *
Asian American Females	\$0	0.00%	3.27%	\$4,104,827	-\$4,104,827	0.00	< .05 *
Asian American Males	\$64,408	0.05%	21.50%	\$26,974,581	-\$26,910,173	0.00	< .05 *
Hispanic American Females	\$0	0.00%	0.47%	\$586,404	-\$586,404	0.00	----
Hispanic American Males	\$0	0.00%	1.87%	\$2,345,616	-\$2,345,616	0.00	----
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.93%	\$1,172,808	-\$1,172,808	0.00	----
Caucasian Females	\$862,101	0.69%	21.96%	\$27,560,984	-\$26,698,883	0.03	< .05 *
Non-minority Males	\$122,658,763	97.74%	32.24%	\$40,461,871	\$82,196,892	3.03	< .05 †
TOTAL	\$125,490,440	100.00%	100.00%	\$125,490,440			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,969,576	1.57%	45.79%	\$57,467,585	-\$55,498,009	0.03	< .05 *
Woman Business Enterprises	\$862,101	0.69%	29.91%	\$37,529,851	-\$36,667,750	0.02	< .05 *

(*) denotes a statistically significant underutilization.

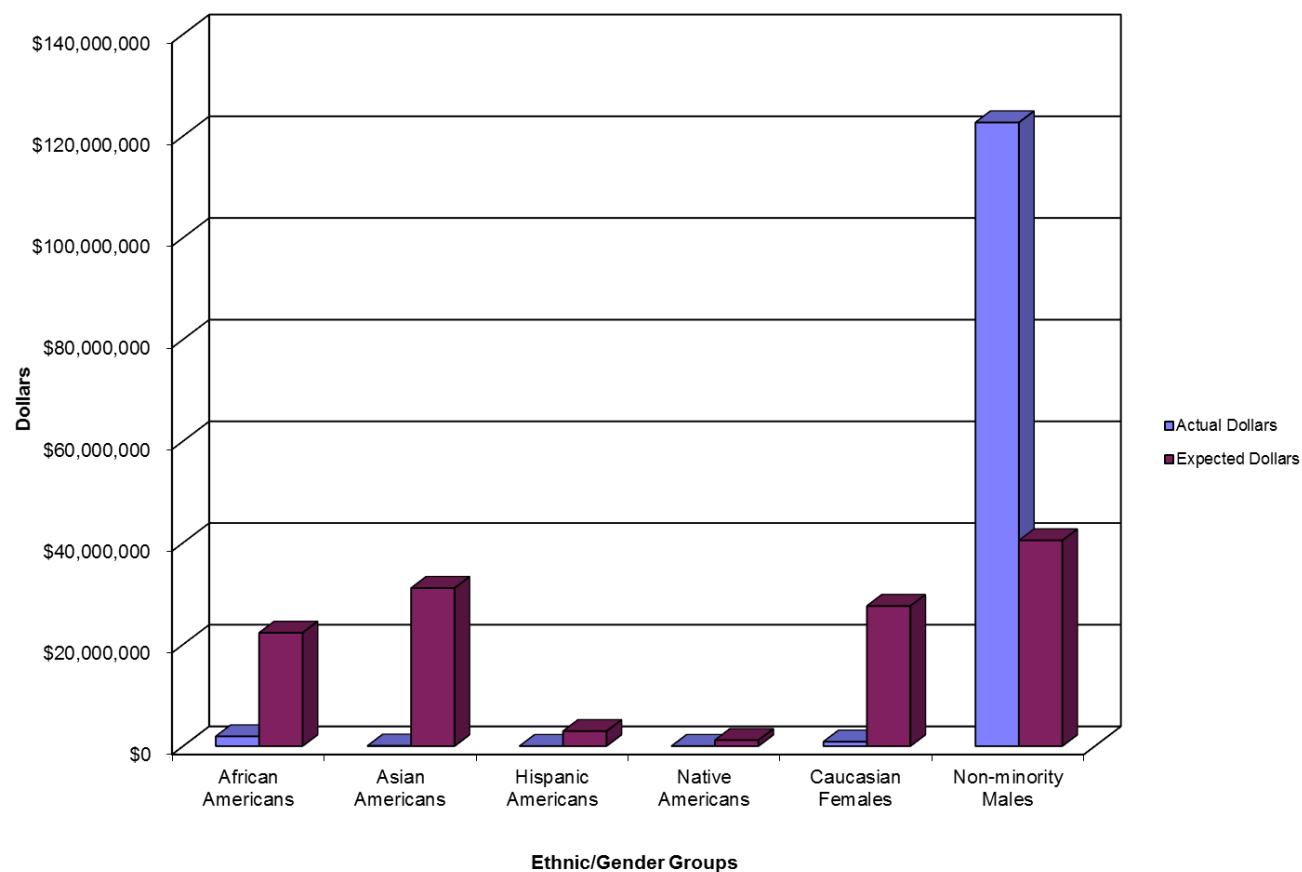
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.5: Disparity Analysis: Architecture and Engineering Services Prime Contracts Valued at under \$3,810,000,
July 1, 2012 to June 30, 2017**



3. Professional Services Prime Contracts Valued at over \$25,000 and under \$1,030,000

The disparity analysis of professional services prime contracts valued at over \$25,000 and under \$1,030,000 is described below and shown in Table 7.9 and Chart 7.6.

African Americans represent 30.83% of the available professional services businesses and received 5.69% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.

Asian Americans represent 11.13% of the available professional services businesses and received 1.22% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.

Hispanic Americans represent 3.76% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.

Native Americans represent 1.05% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 27.37% of the available professional services businesses and received 4.02% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.

Non-minority Males represent 25.86% of the available professional services businesses and received 89.07% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This overutilization is statistically significant.

Minority-owned Businesses represent 46.77% of the available professional services businesses and received 6.91% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.

Woman-owned Businesses represent 47.82% of the available professional services businesses and received 6.15% of the dollars on professional services contracts valued at over \$25,000 and under \$1,030,000. This underutilization is statistically significant.



**Table 7.9: Disparity Analysis: Professional Services Prime Contracts Valued at over \$25,000 and under \$1,030,000,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,520,405	5.69%	30.83%	\$8,242,822	-\$6,722,416	0.18	< .05 *
Asian Americans	\$326,558	1.22%	11.13%	\$2,975,458	-\$2,648,899	0.11	< .05 *
Hispanic Americans	\$0	0.00%	3.76%	\$1,005,222	-\$1,005,222	0.00	< .05 *
Native Americans	\$0	0.00%	1.05%	\$281,462	-\$281,462	0.00	----
Caucasian Females	\$1,075,461	4.02%	27.37%	\$7,318,018	-\$6,242,556	0.15	< .05 *
Non-minority Males	\$23,816,485	89.07%	25.86%	\$6,915,929	\$16,900,556	3.44	< .05 †
TOTAL	\$26,738,910	100.00%	100.00%	\$26,738,910			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$567,769	2.12%	14.44%	\$3,860,053	-\$3,292,284	0.15	< .05 *
African American Males	\$952,637	3.56%	16.39%	\$4,382,769	-\$3,430,132	0.22	< .05 *
Asian American Females	\$0	0.00%	3.76%	\$1,005,222	-\$1,005,222	0.00	< .05 *
Asian American Males	\$326,558	1.22%	7.37%	\$1,970,235	-\$1,643,677	0.17	< .05 *
Hispanic American Females	\$0	0.00%	1.80%	\$482,507	-\$482,507	0.00	----
Hispanic American Males	\$0	0.00%	1.95%	\$522,716	-\$522,716	0.00	----
Native American Females	\$0	0.00%	0.45%	\$120,627	-\$120,627	0.00	----
Native American Males	\$0	0.00%	0.60%	\$160,836	-\$160,836	0.00	----
Caucasian Females	\$1,075,461	4.02%	27.37%	\$7,318,018	-\$6,242,556	0.15	< .05 *
Non-minority Males	\$23,816,485	89.07%	25.86%	\$6,915,929	\$16,900,556	3.44	< .05 †
TOTAL	\$26,738,910	100.00%	100.00%	\$26,738,910			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,846,964	6.91%	46.77%	\$12,504,964	-\$10,658,000	0.15	< .05 *
Woman Business Enterprises	\$1,643,230	6.15%	47.82%	\$12,786,426	-\$11,143,196	0.13	< .05 *

(*) denotes a statistically significant underutilization.

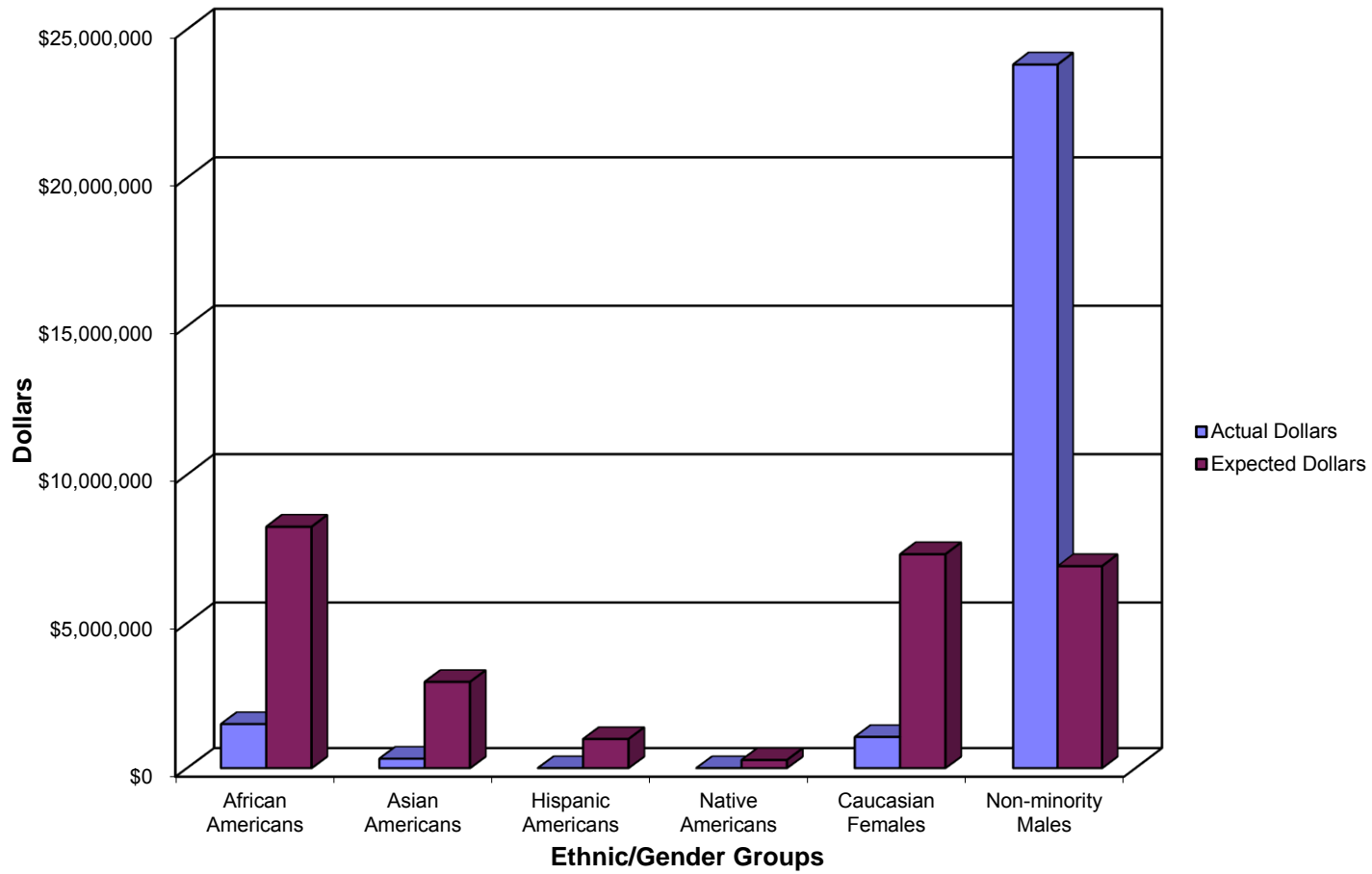
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.6: Disparity Analysis: Professional Services Prime Contracts Valued at over \$25,000 and under \$1,030,000,
July 1, 2012 to June 30, 2017**



4. Goods and Services Prime Contracts Valued at over \$25,000 and Less than \$620,000

The disparity analysis of goods and services prime contracts valued at over \$25,000 and under \$620,000 is described below and shown in Table 7.10 and Chart 7.7.

African Americans represent 20.57% of the available goods and services businesses and received 2.01% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.

Asian Americans represent 4.07% of the available goods and services businesses and received 1.48% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.

Hispanic Americans represent 4.90% of the available goods and services businesses and received 0.62% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.

Native Americans represent 0.24% of the available goods and services businesses and received 0.00% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 20.69% of the available goods and services businesses and received 7.87% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.

Non-minority Males represent 49.52% of the available goods and services businesses and received 88.01% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This overutilization is statistically significant.

Minority-owned Businesses represent 29.78% of the available goods and services businesses and received 4.11% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.

Woman-owned Businesses represent 29.43% of the available goods and services businesses and received 8.64% of the dollars on goods and services contracts valued at over \$25,000 and under \$620,000. This underutilization is statistically significant.



**Table 7.10: Disparity Analysis: Goods and Services Prime Contracts Valued at over \$25,000 and under \$620,000,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$2,284,659	2.01%	20.57%	\$23,345,320	-\$21,060,661	0.10	< .05 *
Asian Americans	\$1,674,532	1.48%	4.07%	\$4,614,773	-\$2,940,240	0.36	< .05 *
Hispanic Americans	\$705,801	0.62%	4.90%	\$5,564,873	-\$4,859,072	0.13	< .05 *
Native Americans	\$0	0.00%	0.24%	\$271,457	-\$271,457	0.00	----
Caucasian Females	\$8,935,554	7.87%	20.69%	\$23,481,049	-\$14,545,495	0.38	< .05 *
Non-minority Males	\$99,868,569	88.01%	49.52%	\$56,191,643	\$43,676,926	1.78	< .05 †
TOTAL	\$113,469,115	100.00%	100.00%	\$113,469,115			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$863,124	0.76%	5.62%	\$6,379,245	-\$5,516,120	0.14	< .05 *
African American Males	\$1,421,535	1.25%	14.95%	\$16,966,076	-\$15,544,541	0.08	< .05 *
Asian American Females	\$0	0.00%	0.60%	\$678,643	-\$678,643	0.00	----
Asian American Males	\$1,674,532	1.48%	3.47%	\$3,936,130	-\$2,261,597	0.43	< .05 *
Hispanic American Females	\$0	0.00%	2.27%	\$2,578,844	-\$2,578,844	0.00	< .05 *
Hispanic American Males	\$705,801	0.62%	2.63%	\$2,986,029	-\$2,280,228	0.24	< .05 *
Native American Females	\$0	0.00%	0.24%	\$271,457	-\$271,457	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$8,935,554	7.87%	20.69%	\$23,481,049	-\$14,545,495	0.38	< .05 *
Non-minority Males	\$99,868,569	88.01%	49.52%	\$56,191,643	\$43,676,926	1.78	< .05 †
TOTAL	\$113,469,115	100.00%	100.00%	\$113,469,115			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$4,664,992	4.11%	29.78%	\$33,796,423	-\$29,131,431	0.14	< .05 *
Woman Business Enterprises	\$9,798,678	8.64%	29.43%	\$33,389,237	-\$23,590,559	0.29	< .05 *

(*) denotes a statistically significant underutilization.

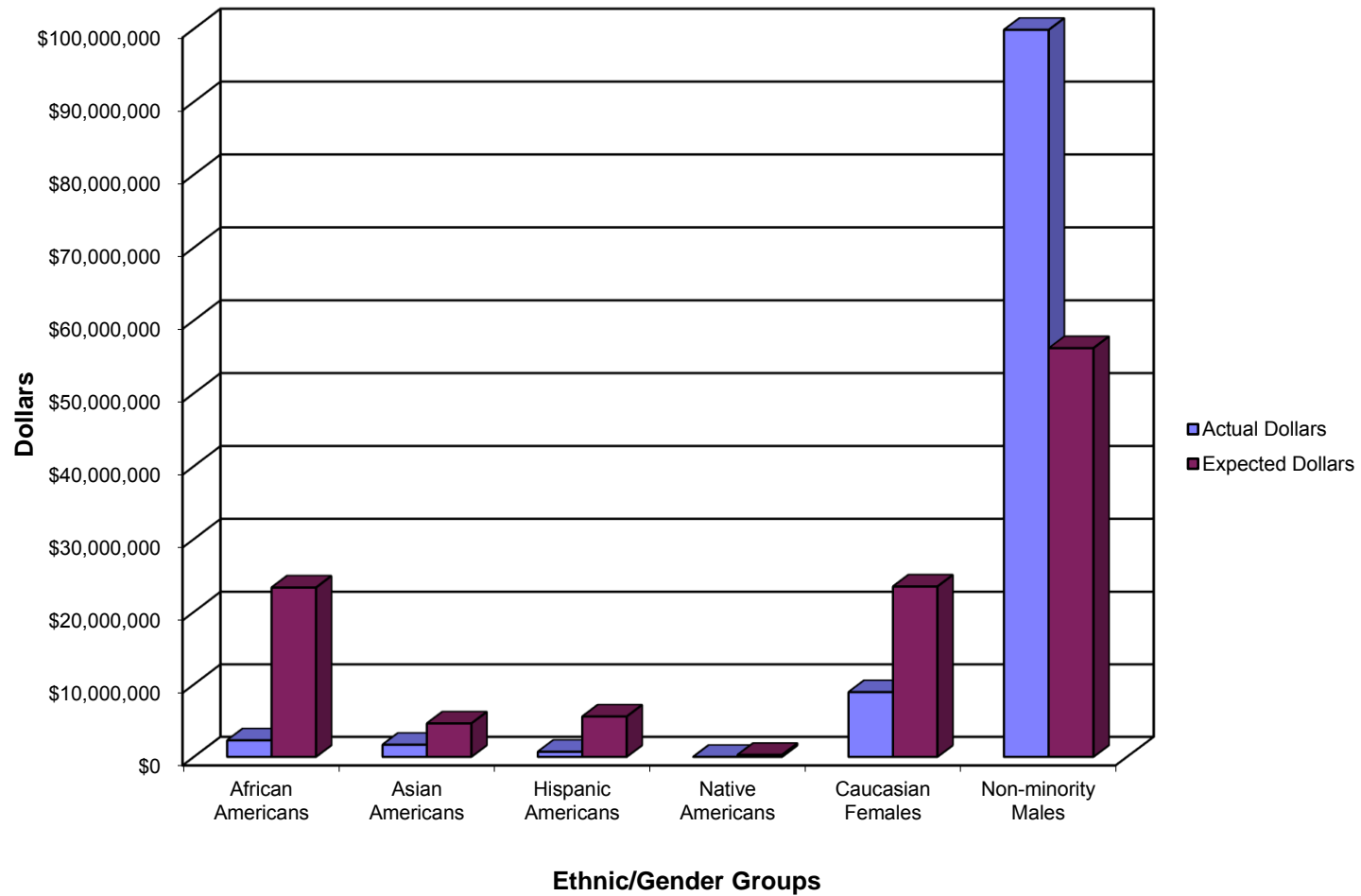
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 7.7: Disparity Analysis: Goods and Services Prime Contracts Valued at over \$25,000 and under \$620,000,
July 1, 2012 to June 30, 2017**



III. Disparity Analysis Summary

A. Construction Prime Contracts

As indicated in Table 7.11, disparity was found for African American, Asian American, Hispanic American, Caucasian female, minority-owned, and woman-owned prime contractors on construction contracts valued as \$25,000 and under. Disparity was also found for African American, Asian American, Hispanic American, Native American, Caucasian female, minority-owned, and woman-owned prime contractors on construction contracts valued at over \$25,000 and under \$5,690,000.

**Table 7.11: Disparity Summary: Construction Prime Contract Dollars,
July 1, 2012 to June 30, 2017**

Ethnicity/Gender	Construction	
	Contracts Valued at \$25,000 and under	Contracts Valued at over \$25,000 and under \$5,690,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>



B. Architecture and Engineering Services Prime Contracts

As indicated in Table 7.12, disparity was found for African American, Asian American, Hispanic American, Caucasian female, minority-owned, and woman-owned prime contractors on architecture and engineering services contracts valued at under \$3,810,000.

Table 7.12: Disparity Summary: Architecture and Engineering Services Prime Contract Dollars, July 1, 2012 to June 30, 2017

Ethnicity/Gender	Architecture and Engineering Services
	Contracts Valued at under \$3,810,000
African Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Native Americans	No Disparity
Caucasian Females	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>



C. Professional Services Prime Contracts

As indicated in Table 7.13, disparity was found for African American, Asian American, Hispanic American, Caucasian female, minority-owned, and woman-owned prime contractors on professional services contracts valued at \$25,000 and under and contracts valued at over \$25,000 and under \$1,030,000.

**Table 7.13: Disparity Summary: Professional Services Prime Contract Dollars,
July 1, 2012 to June 30, 2017**

Ethnicity/Gender	Professional Services	
	Contracts Valued at \$25,000 and under	Contracts Valued at over \$25,000 and under \$1,030,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>



D. Goods and Services Prime Contracts

As indicated in Table 7.14, disparity was found for African American, Asian American, Hispanic American, Caucasian female, minority-owned, and woman-owned prime contractors on goods and services contracts valued at \$25,000 and under and contracts valued at over \$25,000 and under \$620,000.

**Table 7.14: Disparity Summary: Goods and Services Prime Contract Dollars,
July 1, 2012 to June 30, 2017**

Ethnicity/Gender	Goods and Services	
	Contracts Valued at \$25,000 and under	Contracts Valued at over \$25,000 and under \$620,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>



CHAPTER 8: Subcontract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available Minority and Woman-owned Business Enterprise (MWBE) subcontractors were underutilized in the award of Baltimore County's (County) contracts during the July 1, 2012 to June 30, 2017 study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 7: Prime Contract Disparity Analysis*. The same statistical procedures are used to perform the subcontract disparity analysis.

Under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to MWBE subcontractors should be relatively close to the proportion of available MWBE subcontractors in the Baltimore County's market area. Availability is defined as the number of willing and able businesses. The methodology for determining willing and able businesses is detailed in *Chapter 6: Prime Contractor and Subcontractor Availability Analysis*.

If the ratio of utilized MWBE subcontractors to available MWBE subcontractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable.²³⁰ *Croson* states that an inference of discrimination can be made *prima facie* if the observed disparity is statistically significant. Under the *Croson* standard, non-minority male-owned businesses (non-MWBE) are not subjected to a statistical test of underutilization.²³¹

II. Disparity Analysis

As detailed in *Chapter 4: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontractor records for the County's construction and architecture, engineering, and professional services contracts. The disparity analysis was performed on subcontracts issued July 1, 2012, to June 30, 2017.

The subcontract disparity findings in the two industries under consideration are detailed in *Section III*. The outcomes of the statistical analyses are presented in the "P-Value" column of the tables. A description of the statistical outcomes in the disparity tables are presented in Table 8.1.



²³⁰ When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100-percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95-percent confidence level is the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.

²³¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

Table 8.1: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< .05 *	This underutilization is statistically significant.
not significant	<ul style="list-style-type: none">• MWBEs: This underutilization is not statistically significant.• Non-minority males: This overutilization is not statistically significant.
< .05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.



III. Disparity Analysis: All Subcontracts by Industry

A. Construction Subcontracts

The disparity analysis of construction subcontracts is described below and shown in Table 8.2 and Chart 8.1.

African Americans represent 26.05% of the available construction businesses and received 5.06% of the construction subcontract dollars. This underutilization is statistically significant.

Asian Americans represent 7.82% of the available construction businesses and received 1.72% of the construction subcontract dollars. This underutilization is statistically significant.

Hispanic Americans represent 5.55% of the available construction businesses and received 5.48% of the construction subcontract dollars. This underutilization is not statistically significant.

Native Americans represent 0.79% of the available construction businesses and received 0.60% of the construction subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 19.62% of the available construction businesses and received 17.73% of the construction subcontract dollars. This underutilization is not statistically significant.

Non-minority Males represent 40.17% of the available construction businesses and received 69.40% of the construction subcontract dollars. This overutilization is statistically significant.

Minority Business Enterprises represent 40.21% of the available construction businesses and received 12.87% of the construction subcontract dollars. This underutilization is statistically significant.

Woman Business Enterprises represent 31.08% of the available construction businesses and received 19.20% of the construction subcontract dollars. This underutilization is statistically significant.



**Table 8.2: Disparity Analysis: Construction Subcontracts,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$7,684,057	5.06%	26.05%	\$39,525,146	-\$31,841,089	0.19	< .05 *
Asian Americans	\$2,611,033	1.72%	7.82%	\$11,870,807	-\$9,259,775	0.22	< .05 *
Hispanic Americans	\$8,317,734	5.48%	5.55%	\$8,422,305	-\$104,570	0.99	not significant
Native Americans	\$916,461	0.60%	0.79%	\$1,193,712	-\$277,252	0.77	----
Caucasian Females	\$26,902,023	17.73%	19.62%	\$29,776,494	-\$2,874,471	0.90	not significant
Non-minority Males	\$105,302,809	69.40%	40.17%	\$60,945,653	\$44,357,156	1.73	< .05 †
TOTAL	\$151,734,117	100.00%	100.00%	\$151,734,117			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$942,878	0.62%	7.91%	\$12,003,442	-\$11,060,564	0.08	< .05 *
African American Males	\$6,741,179	4.44%	18.14%	\$27,521,704	-\$20,780,525	0.24	< .05 *
Asian American Females	\$2,718	0.00%	1.79%	\$2,719,012	-\$2,716,294	0.00	< .05 *
Asian American Males	\$2,608,314	1.72%	6.03%	\$9,151,796	-\$6,543,481	0.29	< .05 *
Hispanic American Females	\$1,270,173	0.84%	1.53%	\$2,321,108	-\$1,050,934	0.55	< .05 *
Hispanic American Males	\$7,047,561	4.64%	4.02%	\$6,101,197	\$946,364	1.16	**
Native American Females	\$13,721	0.01%	0.22%	\$331,587	-\$317,866	0.04	----
Native American Males	\$902,740	0.59%	0.57%	\$862,126	\$40,615	1.05	**
Caucasian Females	\$26,902,023	17.73%	19.62%	\$29,776,494	-\$2,874,471	0.90	not significant
Non-minority Males	\$105,302,809	69.40%	40.17%	\$60,945,653	\$44,357,156	1.73	< .05 †
TOTAL	\$151,734,117	100.00%	100.00%	\$151,734,117			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$19,529,285	12.87%	40.21%	\$61,011,970	-\$41,482,685	0.32	< .05 *
Woman Business Enterprises	\$29,131,513	19.20%	31.08%	\$47,151,642	-\$18,020,129	0.62	< .05 *

(*) denotes a statistically significant underutilization.

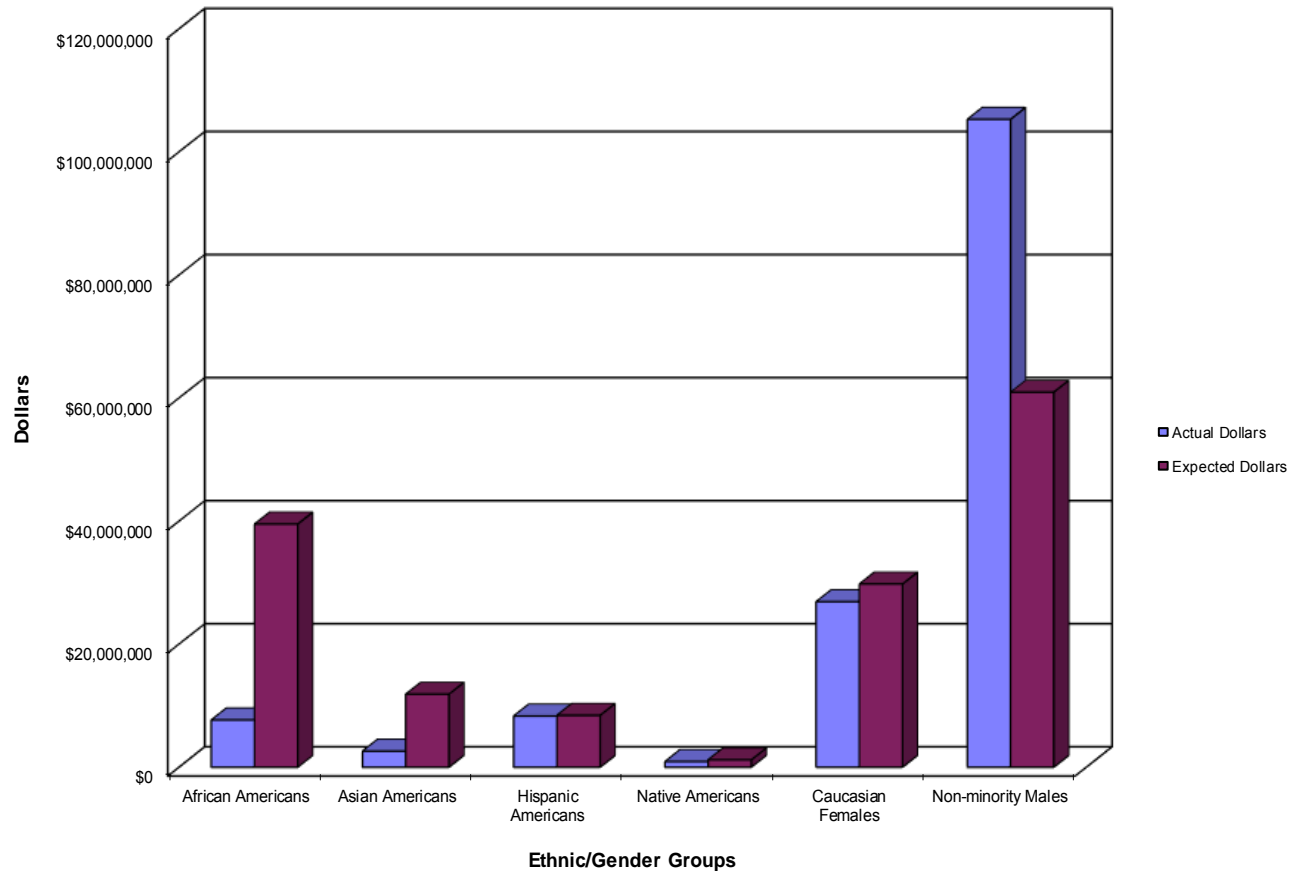
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 8.1: Disparity Analysis: Construction Subcontracts,
July 1, 2012 to June 30, 2017**



B. *Architecture, Engineering, and Professional Services Subcontracts*

The disparity analysis of architecture, engineering, and professional services subcontracts is described below and shown in Table 8.3 and Chart 8.2.

African Americans represent 26.69% of the available architecture, engineering, and professional services businesses and received 5.30% of the professional services subcontract dollars. This underutilization is statistically significant.

Asian Americans represent 8.62% of the available architecture, engineering, and professional services businesses and received 5.44% of the professional services subcontract dollars. This underutilization is not statistically significant

Hispanic Americans represent 5.90% of the available architecture, engineering, and professional services businesses and received 0.98% of the professional services subcontract dollars. This underutilization is statistically significant.

Native Americans represent 0.77% of the available architecture, engineering, and professional services businesses and received 0.00% of the professional services subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 21.51% of the available architecture, engineering, and professional services businesses and received 12.63% of the professional services subcontract dollars. This underutilization is statistically significant.

Non-minority Males represent 36.50% of the available architecture, engineering, and professional services businesses and received 75.65% of the professional services subcontract dollars. This overutilization is statistically significant.

Minority Business Enterprises represent 41.99% of the available architecture, engineering, and professional services businesses and received 11.72% of the professional services subcontract dollars. This underutilization is statistically significant.

Woman Business Enterprises represent 33.37% of the available architecture, engineering, and professional services businesses and received 15.51% of the professional services subcontract dollars. This underutilization is statistically significant.



**Table 8.3: Disparity Analysis: Architecture, Engineering, and Professional Services Subcontracts,
July 1, 2012 to June 30, 2017**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,274,003	5.30%	26.69%	\$6,412,448	-\$5,138,444	0.20	< .05 *
Asian Americans	\$1,306,583	5.44%	8.62%	\$2,071,714	-\$765,131	0.63	not significant
Hispanic Americans	\$235,604	0.98%	5.90%	\$1,418,137	-\$1,182,533	0.17	< .05 *
Native Americans	\$0	0.00%	0.77%	\$184,974	-\$184,974	0.00	----
Caucasian Females	\$3,033,961	12.63%	21.51%	\$5,166,953	-\$2,132,992	0.59	< .05 *
Non-minority Males	\$18,171,864	75.65%	36.50%	\$8,767,789	\$9,404,075	2.07	< .05 †
TOTAL	\$24,022,015	100.00%	100.00%	\$24,022,015			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$430,647	1.79%	8.26%	\$1,985,392	-\$1,554,745	0.22	< .05 *
African American Males	\$843,356	3.51%	18.43%	\$4,427,055	-\$3,583,699	0.19	< .05 *
Asian American Females	\$29,394	0.12%	2.00%	\$480,934	-\$451,539	0.06	not significant
Asian American Males	\$1,277,188	5.32%	6.62%	\$1,590,780	-\$313,592	0.80	not significant
Hispanic American Females	\$231,094	0.96%	1.44%	\$345,286	-\$114,192	0.67	not significant
Hispanic American Males	\$4,510	0.02%	4.47%	\$1,072,852	-\$1,068,341	0.00	< .05 *
Native American Females	\$0	0.00%	0.15%	\$36,995	-\$36,995	0.00	----
Native American Males	\$0	0.00%	0.62%	\$147,980	-\$147,980	0.00	----
Caucasian Females	\$3,033,961	12.63%	21.51%	\$5,166,953	-\$2,132,992	0.59	< .05 *
Non-minority Males	\$18,171,864	75.65%	36.50%	\$8,767,789	\$9,404,075	2.07	< .05 †
TOTAL	\$24,022,015	100.00%	100.00%	\$24,022,015			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,816,190	11.72%	41.99%	\$10,087,273	-\$7,271,083	0.28	< .05 *
Woman Business Enterprises	\$3,725,097	15.51%	33.37%	\$8,015,560	-\$4,290,463	0.46	< .05 *

(*) denotes a statistically significant underutilization.

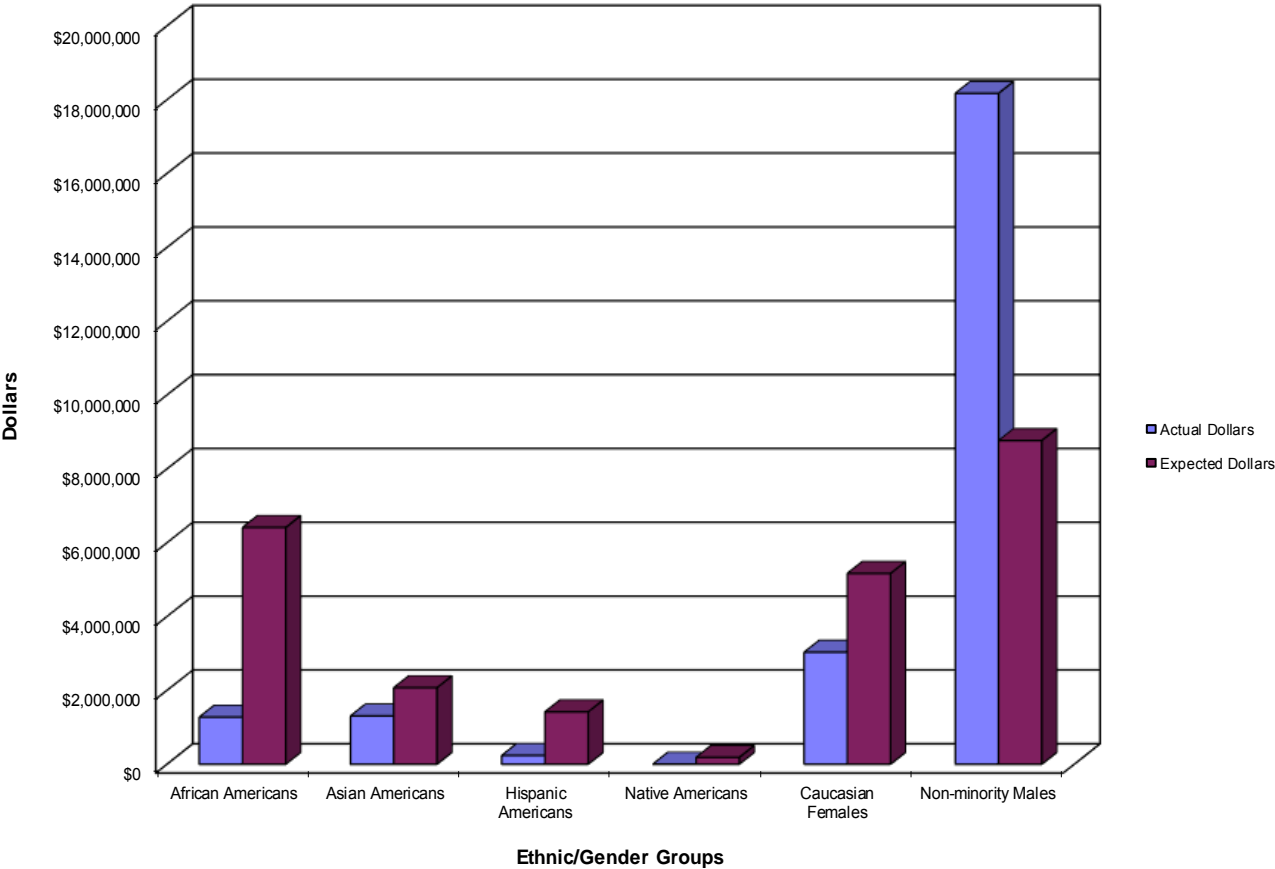
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 8.2: Disparity Analysis: Architecture, Engineering, and Professional Services Subcontracts,
July 1, 2012 to June 30, 2017**



IV. Subcontract Disparity Summary

As indicated in Table 8.4, disparity was found for African American, Asian American, minority-owned, and woman-owned business subcontractors on construction contracts. Disparity was also found for African American, Hispanic American, Caucasian Female, minority-owned, and woman-owned business subcontractors on professional services contracts.

**Table 8.4: Subcontract Disparity Summary,
July 1,2012 to June 30, 2017**

Ethnicity / Gender	Construction	Professional Services
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	No Disparity
Hispanic Americans	No Disparity	<i>Disparity</i>
Native Americans	---	---
Caucasian Females	Underutilized	<i>Disparity</i>
Minority-Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman-Business Enterprises	<i>Disparity</i>	<i>Disparity</i>

(---) Too few available firms to determine statistical significance.



CHAPTER 9: Anecdotal Analysis

I. Introduction

This chapter presents anecdotal testimony gathered through in-depth one-on-one interviews and public comments during the business community meeting. The purpose of this examination is to determine whether Baltimore County (County) has committed acts that may have prevented Minority and Women-owned Business Enterprises' (MWBE) access to County contract opportunities. The anecdotal testimony supplemented the statistical findings reported in the Prime Contractor Disparity and Subcontractor Disparity Chapters.

The importance of anecdotal testimony in a disparity study was discussed in the landmark case, *City of Richmond v. J.A. Croson Co.*²³² (*Croson*). The United States Supreme Court, in the 1989 *Croson* decision, considered whether or not anecdotal testimony could be used to justify remedial race-conscious remedies. The Court opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a [local entity's] determination that broader remedial relief [be] justified."²³³

Anecdotal testimony of individual discriminatory acts, when paired with statistical data, the court found can document the routine practices affecting MWBEs' access to contracting opportunities. Statistical data therefore quantifies the results of discriminatory practices, while anecdotal testimony provides the human context to understand the numbers. Anecdotal testimony collected from business owners for this Study provides information on the types of barriers that are perceived to exist within the market area and affect the development and sustainability of MWBEs.

A. Anecdotal Evidence of Discrimination - Active and Passive Participation

Croson authorizes anecdotal inquiries along two lines. The first line of inquiry investigates active government discrimination as reflected in the government's award of prime contracts or its procurement policies and practices. Passive discrimination is the second line of inquiry. It is the actions of the private sector and the government's passive support of exclusionary practices that occur in the market area in which its funds are infused. Passive discrimination occurs when the government awards contracts to companies that discriminate against MWBEs.²³⁴

The Court cautioned that anecdotal evidence of discrimination is entitled to less evidentiary weight than statistical findings because the personal evidence concerns more private or passive than active or government-sponsored activities. Relative weight was also assigned to the personal accounts. Personal accounts of discrimination that reflect isolated incidents were assigned less weight than

²³² *City of Richmond v. J.A. Croson Co.*, 488 U.S. 509 (1989).

²³³ *Id.*

²³⁴ *Croson*, 488 U.S. at 491-93, 509.



anecdotal evidence of a municipality's institutional practices. Institutional practices were considered to have a different and relatively greater impact on market conditions than other practices.²³⁵ Despite the differences in the perceived impacts of the different types of personal accounts the Court found when paired with appropriate statistical data, anecdotal evidence of either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program.²³⁶

As *Croson* points out, jurisdictions have at their disposal “a whole array of race-neutral devices to increase the accessibility of City contracting opportunities to small entrepreneurs of all races.”²³⁷ Anecdotal evidence, the Court found, has value because it can paint a portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. These narratives, according to *Croson*, can identify specific generic practices that government can implement, improve, or eliminate to increase contracting opportunities for businesses owned by all citizens. In this Study, the utility of the anecdotal evidence collected is considered within the parameters of the law.

B. Anecdotal Methodology

The methods used to elicit anecdotal information consisted of public comments solicited during the business community meeting and one-on-one interviews conducted subsequent to the meeting. All the business owners interviewed were domiciled in Baltimore City or Baltimore County, the market area. The determination of the market area is described in *Chapter 5: Market Area Analysis*.

1. Business Community Meetings

Phase one of the anecdotal process was the collection of public comments during the business community meeting held on October 3, 2019 at the Owings Mills Branch of the Baltimore County Public Library. The meeting served as a platform to announce the study, inform the business community about the study's legal framework, methodology, and timeline. The business owners were provided an opportunity to speak with County representatives regarding contracting opportunities and they were invited to sign-up for an anecdotal interview.

The outreach effort to promote the business community meetings targeted firms in the construction, professional services, and goods and services industries. A total of 107 business representatives attended the meeting. The meeting was recorded and transcribed. Relevant testimony from the meeting has been incorporated in this chapter.



²³⁵ *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d at 1530 (10th Cir. 1994): “while a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”

²³⁶ *Croson*, 488 U.S. at 509.

²³⁷ *Id.*

2. One on One Interviews

One-on-one interviews were also used to collect anecdotal information. An extensive effort was undertaken to identify business owners willing to provide anecdotal accounts. Lists of the utilized businesses, certification directories and the attendee list from the business community meeting were used to identify interviewees.

Businesses that expressed interest in being interviewed were screened. The screener identified basic demographic data and specific information to determine the relevant experiences of the business owner. The screener also captured information regarding the interviewee's experience with public contracting and determined the person's willingness to recount their experiences to a trained interviewer. Structured anecdotal questions were used to solicit information in one-on-one interviews with the business owners that agreed to an interview.

II. Anecdotal Findings

The anecdotes describe general market conditions and experiences of the interviewees doing business, or attempting to do business, with the County. The anecdotal accounts culled from the one-on-one interviews are described below.

A. Racial Barriers and Sexism

MWBEs believe that racial barriers and sexism have affected their business development. Perceptions of these experiences are presented below.

SUBCONTRACT DISPARITY ANALYSIS, CHAPTER 8

Non-minority males account
for 36.50% of available
professional services firms
and received 75.65% of the
professional services
subcontract dollars
∞

Non-minority males account
for 40.17% of available
construction services firms
and received 69.40% of the
construction subcontract
dollars
∞

This minority female owner of a professional services company reported that while some prime contractors are comfortable working with Caucasian women, minorities are not welcomed in the same manner:

If the goals are specific pertaining to African American-owned or Indian-owned companies, you would see the real disparity. I am certain that many prime contractors would claim that they were unable to meet their goals. A lot of them would meet their goals if they were dealing with someone within their own race. Working with someone of another gender is not as difficult as working with someone outside of their race.



This minority male owner of a professional services company described why he believes race plays a factor in the award of the County's contracts:

Clearly, unquestionable disparities are inherent in this system. I wish the County managers could look at us and just see a human being and not the color of our skin. It should be understood that the decision maker's needs are equal to the needs of us. And so, leveling the playing field is needed so that it benefits all and nobody gets left behind. I wish they would do better job. I know for a fact that the color of my skin is a disadvantage. If I had the same knowledge that I currently possess and my skin color was different, I would not be in the position I am in right now. I know that for a fact.

This minority female owner of a professional services company reported that the County's open house events are poorly attended by minority and woman-owned businesses because some contractors believe that the County does not hire minorities and women:

There were more people on the County's side in attendance at open house events than business owners. The room was almost empty. People have gotten the word that the County does not hire minorities, so they stopped attending. I met a woman whose office is nearby, and she does not attend. We had a conversation and I asked her, "How has it been trying to get work from the County?" She said, "I wouldn't know because I haven't gotten any." And she has been in business pretty much as long as I have. This issue of discrimination is broader than me being a minority. It is women as well.

This minority female owner of a professional services company believes that both her race and gender have been negative factors in developing a business relationship with the County:

Yes, race and gender are definitely negative factors. If the majority of business owners are non-minorities, then obviously women are going to have issues. If you are a non-minority woman, you are still able to leverage the experience and get whatever nuggets that you can gain.



B. Difficulty Breaking into the Contractor Community

Many accounts described difficulty breaking into the County's contracting networks because the County has preferred contractors. Informal networks advantage friends, colleagues, and associates in the award of prime contracts and subcontracts. The business relationships built within contracting networks operates as a barrier to MWBE's participation on the County's contracts.

PRIME CONTRACTOR UTILIZATION ANALYSIS, CHAPTER 3

Twenty of the County's 159 construction vendors received \$590,630,352 or 70% of the total prime contract dollars

∞

Fifteen of the County's 77 architecture and engineering services vendors received \$200,206,140 or 71% of the total prime contract dollars

∞

Nineteen of the County's 169 professional services vendors received \$50,272,319, or 70% of the total prime contract dollars

Sixty-seven of the County's 855 goods and services vendors received \$312,708,688, or 70% of the total prime contract dollars

This Caucasian female owner of a professional services company believes the same businesses get contracts again and again by the County, some for long as 40 years:

So, my experience has been that the County primarily hires the same people over and over again, which pretty much ensures they are not going to hire a WBE.

But as far as the world that I live in, which is the design field, The County constantly rehires the same people over and over again. And they get very long-term contracts, and they are not ashamed to post it.

There is actually a firm that has a 40-year, on-call contract. I went and checked it out to make sure it was still there, and it is. And they are not an accounting firm in Baltimore City.

This minority female owner of a professional services company believes that companies who successfully do business with the County have relationships with County staff:

Yeah, they seem to receive contracts from Baltimore County and the state, so again maybe the relationship they have with the procurement managers really does help get a lot of contracts. They seem to have their hand in a lot of things.

This Caucasian female owner of a goods and services company believes in her field only a handful of preferred businesses receive repeat business with the County:

There are a couple businesses in Baltimore County that win all the business as far as furniture go.



This minority female owner of a professional services company believes that preferred firms have personal relationships with County staff and receive notice of bidding opportunities before the solicitation is released:

Having existing relationships makes you the first person that the procurement manager informs on what is coming down the pipe. They have the first knowledge of contracts, which is a leg up for a lot of other folks like me. I believe that happens a lot.

This minority female owner of a professional services company also believes that personal relationships between County procurement staff and certain contractors influence the award of County contracts:

I do not know what network they belong to, but I just feel like certain contractors have some kind of special connection. Of course, I keep hearing, "Well, they know how to do the work, we are comfortable with the fact that they are well versed, or they are experienced." Well, of course if you give it to me I will be too. So, I do not know about a group, but oftentimes I see the same company names pop up so you just kind of wonder what is the connection between this company and the procurement staff.

This minority male owner of a professional services company does not believe the playing field is level in the award of County contracts:

I wish I felt differently. I wish the playing field were utterly level. I do not want to bring in a stigma into the interview, but nine times out of ten when I walk out of a bidding process, I say, "I thought my numbers were really good. How is it that I did not get this one? How is it that I didn't get the next one?"

This Caucasian female owner of a professional services company also believes that the same firms are consistently awarded contracts by the County:



Since we are a part of our industry associations, we have no problem being accepted. But there are some old boy networks out there with no formal induction. So, I would say they exist in the County. And it is just hard to break in and even harder as a woman. I am excluded from them. But it exists because the same firms get the contracts over and over again.

This Caucasian female owner of professional services company believes that many organizations choose to use people with whom they are familiar:

Usually, the client, whether it is public or private, have their own collection of people that they do business with, and they do not ask our opinion for who they should use.

This minority male owner of a professional services company believes the County solicits services he provides through one contractor and his only chance to work with the County is as a subcontractor:

It looks like most of the [type of services withheld] done by the County are provided by the same company. And if there is any possibility for me to bid on any work in that specific area or industry, is to be a subcontractor for the primary companies.

This minority male owner of a professional services company has tried to secure work with the County without success:



**PRIME CONTRACTOR
AVAILABILITY ANALYSIS,
CHAPTER 6**

African American males account for 13.55% of available architecture and engineering firms and received 1.52% of the architecture and engineering prime contract dollars

African American males account for 16.39% of available professional services firms and received none of the professional services prime contract dollars valued \$25,000 and under; and 3.56% of prime contract dollars valued over \$25,000 and under \$1,030,000

When you take the time to prepare for RFPs and nobody responds, it dies. So, I spend time responding to RFPs without making any revenue. I have not been accepted as a vendor. I do not know the reason.

This minority female owner of a professional services company believes that exclusionary networks govern the award of County contracts:

I think a lot of it has to do with relationships. And it is still about who you know. It is just more strategic nowadays because a lot of things are being uncovered. So, they have to get smarter about it.

This Caucasian female owner of a goods and services company reported that she has had no success contracting with the County although she is regularly awarded contracts with the federal government:

Federal government contracts are 98% of my work. So, it is hard for me to determine why I cannot get any work from the County. I pretty much stopped bidding on County projects because I had a zero-success rate. However, I sell over a million dollars' worth of [product] to the federal government every year. So, obviously I am doing something, right.

This minority male owner of a professional services company submitted a number of proposals to the County with no avail:

Actually, sometimes I think the challenges are deliberate. In spite of the fact that they have MBE or WBE goals, I am concerned it does not seem to benefit many MWBEs. Maybe I am biased by the fact that I have submitted quite a number of proposals. And so far, I have received nothing. There is no other way I can describe my lack of success, other than by my experience. The problem I am having is moving beyond the RFP process.



This Caucasian female owner of a professional services company explained why she has experienced difficulty getting work on a County project as a subcontractor:

Certain prime contractors' favor subcontractors that have experience with the County. How do you get experience with the County if nobody takes you on? And I think there is language in the RFP that asks if you worked with the County before. It does not look good if you say, no, we have not. I am not sure if there is a ranking or how this information is used in selecting a contractor. But if it is asked, you would think it is important for them to know if you have done business with the County.

This minority male owner of a goods and services company also complained that the same firms are always awarded contracts by the County:

When I log into the purchasing program and bid on any contract, the previously awarded contracts are always the same company.

This minority female owner of a professional services company explained why she believes the proposal process is deliberately time-consuming:

I do not think the requirements for a company to submit a proposal is fair. Oftentimes they add certain caveats to screen you out so that the evaluation process can go in the direction that they want it to go. They then end up with the company they really wanted in the first place. I got discouraged after a while because I did not know if I was wasting my time. Is this a real opportunity or not? I was spending my money and time writing proposals. I was not sure if the specifications were designed particularly for another firm. I would rather they just be transparent. If you really want to work with company A, B or C, then just let me know so I do not waste my time and my money going through the process.

C. Prime Contractors Avoiding MWBE Program Requirements

Some business owners reported that they have encountered prime contractors that avoid MWBE Program requirements because they do not want to do business with a minority.



PRIME CONTRACTOR
AVAILABILITY ANALYSIS,
CHAPTER 6

African American females account for 4.21% of available architecture and engineering firms and received none of the architecture and engineering prime contract dollars

∞

African American females account for 14.44% of available professional services firms and received 0.01% of the professional services prime contract dollars valued \$25,000 and under; and 2.12% of prime contract dollars valued over \$25,000 and under \$1,030,000

This minority female owner of a professional services company reports that some prime contractors subcontract with white female-owned companies because they feel uncomfortable doing business with African American women:

Oftentimes non-minority prime contractors do not really feel comfortable doing business with African American women. So, they circumvent that whole MBE or woman-owned thing, by simply going with a white woman-owned company. That is one of the reasons why I do not believe they have as many challenges as we do. Prime contractors are very comfortable with them.

Some business owners reported that the County has failed to effectively monitor the MWBE Program requirements.

This minority male owner of a professional services company reported that without the proper enforcement of MWBE Program requirements, the goals will not be met and favored companies will continue to get work from prime contractors:

I think it is one thing for the County to issue goals on each project, but it needs proper enforcement. It looks very nice to have a 25% MWBE goal but there is no enforcement or follow up to ensure that the general contractors are engaging MWBEs and not showing favoritism with certain MWBEs. They should reach across the board and fully engage minority businesses. I do not think it is fruitful when only favored MWBEs get the project.

This minority male owner of a professional services company reports that larger companies fail to meet their obligations regarding the MWBE Program:

I noticed that big companies with established partnerships with counties and cities within the state repeatedly get the work. They continue to extend contracts with them. They just submit their bid again and again, when the contract expires. And if the contract has a MWBE goal, most of the time they do not follow up on their obligations to minority-owned businesses.



D. Public Agency Managers Creating Barriers

Business owners described experiences where County managers created barriers to contracting opportunities by promising to provide contract forecasts but not doing so.

This Caucasian female owner of a professional services company reports that even though County staff promise to contact her after outreach meetings, they never follow up:

Whenever I attended one of the come meet everybody and do work for the County events, everyone promises the world, and I get nothing. They say, "Oh, I'll have him call you," and I get no calls, and I follow up and I get nothing.

This minority female owner of a professional services company reports that her proposal was reviewed by a County staff member that lacked the required technical knowledge:

They need to hire new staff. I have responded to RFPs managed by someone who is not an architect or a designer. The RFP was reviewed, and the selection was made by a civil engineer that did not do vertical work. They did was horizontal work. I asked for a debriefing. And during the debriefing one of the comments that came back, which I found absolutely ludicrous, is that it appeared I had no experience working with Mechanical, Electrical, and Plumbing (MEP) engineers even though it was clearly stated in my proposal that I did.

This same business owner further elaborated that during the debriefing it became obvious that her proposal was evaluated based on criteria that was not required in the RFP:

There was no narrative or any kind of direction in the RFP that required the respondent to document its experience as a prime contractor. So, when I mentioned this to the person who was doing the debriefing, his comment was, "Oh, well we want it. We only want to see prime work." I said, "But you did not require that. It made no comment of that." I explained that you cannot put a requirement on someone that you did not ask for in the RFP. So, in other words, the winning firm got more points than they should have gotten.



This minority male owner of a construction company describes a situation where he was not paid for change orders that were issued throughout the project:

We have experienced lots of difficulty with the County acknowledging or processing change orders that delayed the project. During the project they ignored them and said they would deal with change orders at the end of the job. When we got to the end of the job, they owed us tons of money. Then they had our back against the wall, and they were frankly pretty abusive at that point. They threatened us with penalties, damages, and things of that nature. We had no power, and they realized it, and took advantage of it.

This same business owner further elaborated that his payments were reduced by the County in order to balance the project's budget:

Their strategy was to make up for short falls by taking money away from me as if they are balancing a ledger. The old director of [department name withheld] said if we get a charge from another contractor on the project, we just make someone else pay for it. It does not matter who is responsible. So, in my case, if they got a bill from an architect who is asking for extra money then they take it from the contractor.

E. Difficulty Navigating the Bid Process

Several business owners described barriers they encountered trying to get information on the County's bid information, understanding the RFPs, or gathering information for bids.

This minority female owner of a professional services company believes the only chance she has to work with the County is through their on-call system:

The only real opportunity for architects is this on-call. And if you do not get on that list you can only work as a subcontractor. And it is not a fair system. It does not work. If you do win an on-call contract, there is no guarantee of work. It is just a process they use to procure services without going through an open bidding process or an open RFP process.



This same business owner describes a conversation she had with a County staff member about the on-call list:

The on-call solicitations are not fair, and they do not work. I applied through the prequalification process. I have never been able to qualify for the on-call. I assumed that every time I applied to be prequalified, it was to be placed on the on-call. But when I started asking about it, I found that was not correct. I asked how to get on the on-call list, and I was told we already have firms on that list. And I said, "Well, can I see the list? How is it established?" I was told that was not public information. I am not on it now, because I have not been notified when they are seeking renewal of that list. I have not been notified in years.

This Caucasian female owner of a goods and services company complained that the bid submission process should occur online rather than through the mail:

Yeah, I would like to see a little bit more electronic submission. Right now, you have to print and mail everything.

This minority female owner of a professional services company reported that although she has been on the County's vendor list for several years, she has not received any communication from the County about bidding opportunities:

I am on the vendor list. I also wonder if I am still on there, because I never really hear anything or see anything in my email. So, I probably need to double check to see if I am still on the vendors list. But yeah, I had signed up many years ago.

This minority female owner of a professional services company reported that more transparency is needed regarding the County's vendor list:

I discovered that Baltimore County had two vendor lists. One list was an on-call list, and the other was a prequalification list. But there is no way to really find out the firms that are on the list or how to get on the list.



This minority female owner of a professional services company reported that she usually learns about bid opportunities close to or even after the bid deadline:

I have found out about contract opportunities after the deadline has passed. Or even worse, when I find out about the opportunity, it is due in two days. But I am unable to make it happen in two days.

This minority female owner of a professional services company reported that she learns about the County's bidding opportunities from the State's marketplace website, but not directly from the County:

The only hear about bidding opportunities with the County is through eMaryland marketplace. I have registered with Baltimore City, Baltimore County, Montgomery County, and Howard County. I hardly get any solicitations from Baltimore County. So, I have to go on eMaryland marketplace where I assume all the counties are listed.

This minority female owner of a professional services company reported that the e-Maryland Marketplace bid process is confusing because it lacks clear instructions:

I am registered with E-Marketplace. After I look at the bids that pertain to the services that I provide, I do not know what to do at this point. What is the next step in the bidding process? I do not know the steps nor what to do.

This Caucasian female owner of a goods and services company suspects that the County does not publish all of the contracting opportunities in her field:

Honestly in Baltimore County, there are a lot of opportunities for things that I provide are not publicly published. So, when Baltimore County puts out a list of contract opportunities in eMaryland marketplace, there are very few opportunities in my field.



This minority female owner of a professional services company believes that the County's prequalification form should be streamlined:

I think the prequalification form is antiquated. No one else is using that type of form. The process requires two forms which can be burdensome. Especially when most entities are not using that old form anymore.

This minority female owner of a professional services company reported that she has experienced difficulties trying to locate the County's contracting opportunities:

I would say lack of information is an issue. I do not know about half of their opportunities or where to look for them. Also, their RFPs have a lot of pages and its difficult to figure out what pages to focus on. It is a little overwhelming.

This minority female owner of a professional services company reported that the RFP proposal package is onerous:

I find the supporting documents burdensome. It is unbelievably ridiculous.

F. Inadequate Lead Time

Several interviewees thought that the lead time to prepare a proposal was inadequate because of the amount of materials they needed to be responsive.

This minority male owner of a professional services company reported that the time allowed to respond to the County's proposals is generally insufficient:

Frankly, it should be a little longer. In general, it takes about three weeks to review hundreds of drawings and specifications. Any you have to review it and digest it before submitting a response. They really should allow four to five weeks. It is not like we see the advertisement the day it comes out. So, three weeks is tight.



This minority female owner of a professional services company said that she received as little as three days to respond to an RFP:

Yeah, it was sent to me, with only three days to respond. It was from Baltimore County. I was not able to respond in a timely manner.

This minority female owner of a professional services company reported the response time is sometimes five-days to which she does not respond.

I have seen a response time from five days to three weeks. When I see five days, I do not even bother to respond because I feel like, "You already know who you want. Who can prepare a proposal in five days?" It is just not feasible. When they provide three weeks or some similar timeline, then I think maybe they are serious about bidding this out and working with someone new. But anything under three weeks, I think they already have somebody lined up.

This Caucasian female owner of a goods and services company reports more time is needed to respond to larger projects:

If the bid requires designing and space planning, that can take a couple weeks. A lot of paperwork is required for any Maryland bid. So, it usually takes a little bit more time if it is a larger project with more items.

G. Barriers to Financing

Several business owners reported on the obstacles they encountered trying to secure financing for their small businesses.

This Caucasian female owner of a goods and services company reported, as a new business she have difficulty securing financing:

Just the fact that I am a new owner has prevented me from obtaining financing. I have only owned the company for five years. So, a lot of people are scared to take a risk on a relatively new person.



This minority male owner of a professional services company reports that financing is an issue for his firm.

Obtaining funding is a problem because of the collateral required to get a loan.

This Caucasian female owner of a goods and services company reports that she had difficulty obtaining financing when she started her business, and she did not receive help from any financial institutions:

When I started my business, I could not get financing. So, until just three or four years ago, I was unable to get any substantial financing. Before that I had to fund things myself. I have not gotten a whole lot of help from any financing programs.

H. Late Payments

Many business owners reported that they received late payments from prime contractors and the County.

This minority female owner of a professional services company reports that she can wait up to 60 days for payments from prime contractors:

Payments were coming in 60 to 90 days late although my subcontract required a 30-day minimum. I have overhead and bills to pay. My billing manager likes to get paid on time, so we know our profits and losses. So, it is an inconvenience when we are not paid on time.

This Caucasian female owner of a goods and services company reports that it is a struggle to get paid from prime contractors:

Because I usually have to fight to get paid, I am become pretty soured to that. There is one general contractor that I have done business with who drags out the payment every single time. It just goes on and on and it is exhausting.



This Caucasian female owner of a professional services company also reports late payments by prime contractors:

Since we are a subconsultant to big prime consultants, we only get paid after the prime receives payment from the County. This often puts us in a difficult spot because we do not know when the prime consultant gets paid. We don't have a leg to stand on because they are not always forthcoming with the information when they got paid. Some jurisdictions are very forthcoming and inform subconsultants when they paid their prime contractor.

This Caucasian female owner of a professional services company reported that it is a common practice that the County pays late:

I think that everyone knows that the County pays between 45 or 60 days. We just accept it.

This minority male owner of a construction company reports that late payments from prime contractors made it difficult for him to pay his workers:

They did not pay us and did not explain why. They would not tell me why it took so long to get paid. They did every single thing you could possibly do to make getting paid difficult. You cannot keep a job going if you are not getting paid and you cannot pay your people. But they do not care about that at all. They just say that is your problem.

This minority female owner of a professional services company describes an incident where she struggled to receive payments from a prime contractor:

Communicating and getting payments in on time has been a hassle. So, I am not taking any more clients. And I have tried to get paid from one prime contractor that is located in India. Why can't the prime contractor be from the United States or Baltimore County? I have to call India which baffles me. They are in India; can you believe it?



This minority male owner of a professional services company reports that he never received payment from a prime contractor despite the fact he complained to the County:

I never got paid, even though I received the contract. I tried to reach out to the County and the major contractor, and nothing was done.

I. Size and Capacity Issues

Several business owners reported that their business size or capacity precludes their business from being competitive against larger businesses.

This Caucasian female owner of a goods and services company reports that she does not get the same terms as larger suppliers:

There are larger vendors that get bigger discounts. So, they squish out us little guys. [Name withheld] is located in Pennsylvania and they are much larger than I. They get half of the County's equipment. But we just do not have the money or the discounts like the large guys.

This Caucasian female owner of a goods and services company explained why she believes large companies have an advantage over smaller businesses:

Well, I have a very small business. I pretty much own, operate and do everything myself. Sometimes it is difficult to be competitive with large companies if there are no goals on the project. The bids are not apples to apples. Some companies have their own installation teams and trucks, so they are able to price their installations with much less overhead. So, when they do not have a woman-owned goal, the playing field is very unequal.

This Caucasian female owner of a professional services company believes the County perceives smaller firms as less qualified:

I do not see any chance for a small business getting any contract award. Most of the time, the MBE firms are smaller firms. And I think the County, all the agencies for that matter, have a perception that smaller firms are less qualified.



This minority male owner of a professional services company believes the size of his company impacts his ability to win a County contract:

Unfortunately, I have not won anything due to the size of my company and experience.

This Caucasian female owner of a professional services company believes the County structures its RFPs to benefit larger firms:

I cannot recall specifically, but periodically, there will be an item in the RFP that requires experience on five projects over the last five years that relate directly to the project. Well, usually its very large firms that have won awards for a particular type of project. Therefore, it is the large firms have experience with that number of projects.

J. MWBE Program Comments

Business owners made various comments about the County's MWBE Program in an effort to improve access for MWBEs.

This minority female owner of a professional services company believes the County's MWBE Program could be more beneficial for small businesses:

The only thing I understood is that on certain contracts, they will provide a 10% requirement for MWBE. I see no value in it. The work that I have gotten has been very minor and it was a while ago. I think the last contract I won was maybe in '14.

This Caucasian female owner of a goods and services company reports that she was not aware of the County's MWBE Program:

I am certified through the State and City as an WBE. But I did not realize the County had a program.



This minority male owner of a professional services company believes the County's MWBE Program is valuable although he has not received any work:

*I have been trying to get a contract with the County. It has not worked out yet.
I think the program is valuable, but it has not helped me yet.*

This minority female owner of a professional services company reported that she is not familiar with the County's MWBE Program:

*I am not sure how valuable the program is since it has not helped my business.
But I have not attempted to do procurement through that program.*

This Caucasian female owner of a goods and services company is a certified WBE but has not received any benefit from the MWBE Program:

Well, I have been an WBE since 2012. I understand that bids or RFPs come out that encourage MWBEs to participate. But when you read more into the requirements there is no MWBE set aside. So, it defeats the whole purpose.

This minority male owner of a professional services company does not believe the MWBE Program has helped his business:

No, I do not think it has helped me. I have attended quite a number of their pre-bid meetings, and in the 10 years that I have been active, I have not got anything from them. We have no hope without the MBE goals. We have no hope at all.

This Caucasian female owner of a professional services company reported that the County's MWBE Program is valuable although he has not received any benefits:

I know they have had a program for a long time. You have to pre-register or pre-qualify using the MDOT MWBE certification. Is it valuable? Yes. Has it helped my business? No, because it seems that bigger firms still get the contracts. So, in that respect, it has not really helped at all. It is valuable because the County has a minority percentage that the prime contractors have to meet. But it is not really that robust. It is a less percentage than the State



requires for example. It is just really hard as a minority business to get contracts with the County.

This minority female owner of a professional services company believes that the MWBE Program has been helpful in terms of the technical assistance it offers:

I think it has been valuable in terms of educating new business owners on how to get in the game. I learned about the different minority programs that exist within the state of Maryland. And I think they were very helpful in just helping me understand the County's procurement process. So, they were helpful in that capacity.

K. Experiences During the COVID Pandemic

Several interviewees shared their experiences as small business owners during the Covid-19 pandemic.

This Caucasian female owner of a professional services company reports that her business has suffered during the pandemic:

Many entities are not moving forward with projects that require institutional funding. So, the work that we do for commercial tenants has dropped off dramatically. We are suffering terribly because we are not getting as much work. Although I did receive a PPP loan it was limited in duration.

This minority female owner of a professional services company reports that since she obtained funding from the SBA her firm was not eligible to receive funds from the County:

The County is offering funds for minority firms. They actually set a goal for that. I credit the new County Executive because I really believe that he was responsible for establishing the funding. I could not to take advantage of it, because applicants could not receive any funding from any other source, particularly SBA.



This minority male owner of a professional services company also reports that he was unable to secure funds from the County because he received a loan from the SBA:

Because I applied for an SBA federal loan, I am not eligible for any assistance from the County. I am open and I am operating, but I was down \$14,000 last month. And sadly, the only thing that people want to buy right now are masks and gloves. All my employees are being paid to stay home, so I am doing it all myself. I had to cut my hours down because I just cannot do an eight-hour day by myself anymore. Where I used to do \$500 a day, I am now doing between \$70 and \$100.

This minority male owner of a professional services company reports that he was not eligible for County or State support during the pandemic because he is a sole proprietor:

The County and State provided loans for small businesses affected by corona virus. Although there were loans set aside for sole proprietorships, the business must have two employees on payroll. If you are a sole proprietor without two employees you are not qualified for COVID-19 small business loans. You have to have at least two people on the payroll while registered as sole proprietor. I was not qualified for any of those loans. They should not exclude sole proprietorships without employees on their payroll.

This minority female owner of a professional services company reports that she too was unable to obtain a loan from the County because she is the business' sole employee:

Well it definitely has affected my business in terms of finances because clients cannot come to my office. My company is based on fee for service, so if clients do not come for therapy, I do not get paid. So that has been an issue. This has affected me tremendously. I have not received any support from the County or other agencies. The County requires at least two or more employees. Some of us just have a sole employee.



This minority female owner of a professional services company reports that the pandemic has forced her to close her business:

I had a retail establishment in Baltimore City. We had to close our doors because we could not sell anything, there were no customers.

This Caucasian female owner of a goods and services company was forced to file for unemployment during the pandemic:

Since nobody is working in their offices, buying furniture is not a top priority because no one knows how long this is going to last. So, there are not many opportunities. I did get a stimulus check, but I had to file for unemployment.

This minority male owner of a professional services company reports that the pandemic has had a devastating impact on his company:

It is bad, it is really bad. I provide professional services and our rates are charged per hour. I cannot bill for any activity that does not take place. So, I cannot bill for anything. I have two guys sitting at home doing absolutely nothing. I have applied for financial support and I am waiting for a response.

This Caucasian female owner of a professional services company commends the County on offering support to businesses during the pandemic:

Well, the pandemic is very disruptive, like it has been for everybody. We are fortunate that engineering was considered essential work. So, we have been able to keep our business open. Since everybody is working from home it is a challenge for our employees that have kids and no childcare, or that have kids that are homeschooled. The County offers a lot of support in my opinion. They have grants. They have been pretty good communicating with the business community. I feel they have done a good job. I am not in a position where I had to ask for help. At this point, I do not need any, but I feel that the County is well-positioned to offer and give help.



L. Exemplary Practices/Positive Experiences

The following business owners reported exemplary practices and positive experiences they have had dealing with Baltimore County during the pandemic.

This Caucasian female owner of a goods and services company commended a County staff person for listening to her concerns trying to contract with the agency.

[Name withheld] who works with the County has not gotten me any work, but she at least listened to my concerns. We talked about what was on the website. She pointed out that it lists contracts that firms have been awarded. The County is really great with time management when it comes to providing information regarding pricing on products. They are actually one of the better agencies.

This minority male owner of a professional services company commends a County contract manager for helping him submit an RFP:

There was one contract I did in 2019. I submitted my response to the request for proposal. The contract manager was so helpful. He gave me insight to understand what the contract actually required. This was helpful to me.

This minority female owner of a professional services company reports on her positive relationship with the County:

I have a good working relationship with them. They refer my company all the time. So, we have a good working relationship.

This minority female owner of a professional services company reports that the County's pre-bid conferences are beneficial:

When I first started my business back in 2011, I attended pre-bid conferences. They provided good information on the procurement process and they responded to questions. The pre-bid conferences are great.



This Caucasian female owner of a professional services company credits two County staff members for helping her connect to other decision makers:

[Name withheld], I do not know what his current role is. He was very helpful connecting me to the MWBE office. I learned how the tiered system works. So, that was really helpful. They went out of their way to help a small business. The other person is always very helpful, I think her name is [name withheld].

M. Recommendations

Recommendations were offered by interviewees to increase the participation of minority, women, and other small-owned businesses on County projects.

This Caucasian female owner of a professional services company suggests that the County maintain copies of MWBE subcontracts to properly oversee goal attainment:

Other jurisdictions for example, requires copies of subcontract so that they know the terms prime contractors require of their subcontractors. So, they know the subcontractors' payment terms. That type of transparency is not there with the County.

This Caucasian female owner of a professional services company recommends that the County amend its on-call contract award process:

On-call designer or architect contracts are the only opportunities out there for us. They choose three or four architecture firms with their subcontractors. It is very difficult to get on the list because of the rotation process. And the documentation required to get awarded is voluminous which is a double whammy and wasteful.

This minority female owner of a professional services company recommends that the County improve communication with MWBEs and offer more programs, such as virtual workshops and mentorship opportunities:

Having contracting information readily available for women and minority businesses would be extremely helpful. I think if there were virtual workshops or information emailed informing me of the process or where to find the contracting opportunities would be great. I would like to attend a workshop to



get a better understanding of Baltimore County's procurements or the bidding process. That would be extremely helpful. I recommend a mentor protégé program too.

This minority female owner of a professional services company recommends that the County better inform MWBEs of contracting opportunities via email:

Email notifications would be great especially if you are already on a vendor list. So, if they could send an email saying, "We have this opportunity coming up, and the bids or the proposals are due at such and such a date." That would be great.

This Caucasian female owner of a goods and services company also recommends that the County do a better job informing businesses about contracting opportunities via email:

It would be nice if there was an email with a link to daily opportunities for your type of work. For instance, the State of Virginia, emails daily regarding contracting opportunities.

This Caucasian female owner of a professional services company recommends opportunities specifically for local companies:

I know that County-based local preferences are not part of your study. But I think preferences for County-based firms should be considered.

This same business owners recommends more transparency in County contracting, especially for subcontractors:

It would be good to have better transparency regarding payment terms between subcontractors and prime contractors. If there was some mechanism that required the prime contractor to disclose when they got paid would help subconsultants get paid.



This minority male owner of a professional services company suggests more contracting opportunities for MWBEs:

My suggestion would be to have more contracts set asides for minority-owned or women-owned businesses.

III. Summary

This chapter presented a qualitative analysis of the barriers and exemplary practices business owners experienced while working on or seeking work from the County. The interviewees referenced barriers to accessing contracts based on conditions such as the County's use of preferred contractors, the on-call procurement process, and delayed invoice payments. Kudos were given to County staff and the MWBE Program. Recommendations were offered to improve the Program's effectiveness in fulfilling its mission. This anecdotal information, together with the statistical findings have informed the remedies presented in *Chapter 10: Recommendations*.



CHAPTER 10: Recommendations

I. Introduction

Baltimore County (County) in 2018 commissioned Mason Tillman Associates, Ltd. to conduct a Disparity Study (Study) to determine if the factual predicate exists to support race and gender contracting remedies. The 1989 landmark decision of *City of Richmond v. J. A. Croson Co.* (*Croson*)²³⁸ requires local governments to demonstrate a strong basis in evidence of ongoing effects of past or present discrimination for the enactment of race-conscious remedies. Evidence of discrimination must be statistically significant to document a compelling interest for a race-based contracting program.²³⁹ Although race-conscious goals are subject to strict scrutiny, the highest legal standard, remedies based on gender only require a finding of underutilization.

This Study assessed the County's use of minority and women-owned business enterprises (MWBEs) on contracts issued for construction, architecture and engineering, professional services, and goods and services. The recommendations presented in this chapter provide enhancements to the County's MWBE Program. The enhancements include race and gender conscious remedies to address the statistical findings of disparity documented in the Study and race and gender-neutral components to increase the participation MWBEs and other small businesses on County contracts.

II. Review of the County's Minority and Women-owned Business Enterprise Program

A. Background

The County's commitment to creating a level playing field for minority and women-owned business enterprises (MWBEs) predates the 1989 landmark Supreme Court decision that described the standards for local and state governments' race- and gender-conscious remedial measures.²⁴⁰ Since enacting its first MWBE Program in 1983, the County administrators have issued four additional executive orders enacting and revising its MWBE Program. The current MWBE Executive Order was signed by County Executive Kevin Kamenetz on July 27, 2017. Responsibility for ensuring County departments comply with the procedures and provisions set forth in the 2017 Executive Order was delegated to the Minority Business Enterprise Office within the Office of Budget and Finance.



²³⁸ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²³⁹ *Id.*

²⁴⁰ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495-96 (1989).

B. MWBE Program Office Accomplishments

The MWBE Program Office was created under the 2004 Executive Order to manage the operation of the MWBE Program. In 2007, the County hired a Minority and Small Business Marketing Manager to manage the MWBE Program and to promote the program through educational and outreach activities. Under the leadership of the Minority and Small Business Marketing Manager, numerous innovative procedures and initiatives²⁴¹ have been implemented to build the capacity of MWBEs and maximize their participation on the County's contracts. They include:

- Direct soliciting to MWBEs certified by MDOT and the City of Baltimore
- Purchasing Division's liaison to the Office of Fair Practices for the Procurement Review Group
- Host and facilitate outreach activities:
 - Meet the Buyers meetings
 - Annual Meet the Primes with Baltimore Meet the Primes
 - Attend Purchasing Division's pre-bid and pre-proposal conferences to discuss the MWBE solicitation forms and requirements
- Collaboration of outreach events with:
 - Federal agencies including SSA, OSBDU-DC, SBA
 - State agencies including the Governor's Office Minority Affairs and MDOT
 - Local governments including Baltimore City, Montgomery County, Prince George County Public Schools
 - Business and trade associations including US Pan Asian American Chamber of Commerce, Black Chamber of Commerce, Maryland Washington Minority Companies Association, Maryland Minority Contractors Association, and Maryland Hispanic Chamber of Commerce
- Instituted MWBE data management systems:
 - PRiSM Contract Compliance Software to track and monitor MWBE utilization
 - Created a MWBE PriSM Compliance help desk email account, mwbe@baltimorecountymd.gov
- Advertising
 - Solicitations posted on eMaryland Marketplace
 - eMaryland Marketplace system administrator
 - Responsible for activating and deactivating buyers
 - Serve as the first line help desk for eMaryland Marketplace Administrator
- Establish MWBE goals on a contract by contract basis
- MWBE Plan and Good faith effort must be submitted with the bid or the contractor may be deemed as nonresponsive
- Created a Twitter Account @BaCoBiz4All
- Implemented MWBE noncompliance penalties



²⁴¹ Please see *Attachment A* for full list of accomplishments.

- Drafted the Minority, Women and Small Business Enterprise Process and Procedures Manual
- Introduced Economic Benefit Factor to determine the economic impact County contracts have in the local community.
- Keep abreast of procurement regulations and MWBE/DBE Compliance requirements and best practices through:
 - American Contract Compliance Association annual training
 - Maryland Public Purchasing Association membership
- Implemented a Small Business Purchase Program
- In the process of creating a Disadvantage Business Enterprise Program

III. Disparity Analysis Findings

The statistical findings of disparity in the award of contracts to MWBEs are summarized in this section and detailed in *Chapter 7: Prime Contract Disparity Analysis* and *Chapter 8: Subcontract Disparity Analysis*. The disparity findings were calculated in compliance with the constitutional parameters set forth in *Croson* and its progeny.²⁴²

A. Prime Contractor Disparity Findings

The County's prime contracts was analyzed at two size thresholds: 1) informal prime contracts, as defined by the Office of Budget and Finance's *Purchasing Manual*; and 2) formal prime contracts, with the upper limits determined by a statistical calculation. The informal threshold for each industry is shown in Table 10.1.²⁴³



²⁴² *Croson*, at 488 U.S. 469 (1989).

²⁴³ *Purchasing Manual*. Office of Budget and Finance. Section 8-1.

Table 10.1: Informal Contract Threshold by Industry

Industry	Informal Contract Threshold
Construction	\$25,000 and under
Architecture and Engineering Services	No threshold
Professional Services	\$25,000 and under
Goods and Services	\$25,000 and under

Formal prime contract thresholds are defined by the Office of Budget and Finance's Purchasing Manual. However, for this analysis an upper limit was set for each industry to exclude outliers. The threshold for formal contracts, as defined in the Office of Budget and Finance's *Purchasing Manual*, is over \$25,000 for construction, professional services, and goods and services. The methodology for defining the upper limits of the formal size threshold, for each industry, as used in the analysis, is detailed in Chapter 3, Prime Contractor Utilization Analysis. Table 10.2 shows the upper bounds for the formal prime contracts in each of the four industries.

Table 10.2: Formal Contract Threshold by Industry

Industry	Formal Contract Threshold
Construction	Over \$25,000 and less than \$5,690,000
Architecture and Engineering Services	Less than \$3,810,000
Professional Services	Over \$25,000 and less than \$1,030,000
Goods and Services	Over \$25,000 and less than \$620,000

1. Construction Prime Contractor Disparity Findings

Table 10.3 depicts informal construction contracts valued \$25,000 and under. Table 10.4 depicts the disparity findings for formal construction contracts valued \$25,001 and less than \$5,690,000.

A disparity was found in the award of informal construction prime contracts valued \$25,000 and under to African American, Asian American, and Hispanic American-owned businesses and Caucasian females.



Table 10.3: Construction Services – \$25,000 and Under, July 1, 2012 to June 30, 2017

Ethnicity	Construction
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Construction
African American Females	Disparity
African American Males	Disparity
Asian American Females	Underutilized
Asian American Males	Disparity
Hispanic American Females	not significant
Hispanic American Males	Disparity
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----) Too few contracts/available firms to determine statistical significance.

A disparity was found in the award of formal construction prime contracts valued \$25,001 and less than \$5,690,000 to African American, Asian American males, and Hispanic American-owned businesses and Caucasian females.

Table 10.4: Construction Services – \$25,001 and Less than \$5,690,000, July 1, 2012 to June 30, 2017

Ethnicity	Construction
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	Disparity
Caucasian Females	Disparity
Ethnicity and Gender	Construction
African American Females	Disparity
African American Males	Disparity
Asian American Females	**
Asian American Males	Disparity
Hispanic American Females	not significant
Hispanic American Males	Disparity



Ethnicity and Gender	Construction
Native American Females	----
Native American Males	Disparity
Caucasian Females	Disparity

(**) Overutilization

(----) Too few contracts/available firms to determine statistical significance

2. Architecture and Engineering Prime Contractor Disparity Findings

Table 10.5 depicts the disparity findings for architecture and engineering services contracts valued less than \$3,810,000.

A disparity was found in the award of architecture and engineering prime contracts valued less than \$3,810,000 to African American, Asian American, and Hispanic American-owned businesses and Caucasian females.

**Table 10.5: Architecture and Engineering Services – Less than \$3,810,000,
July 1, 2012, to June 30, 2017**

Ethnicity	Architecture and Engineering
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Architecture and Engineering
African American Females	Disparity
African American Males	Disparity
Asian American Females	Disparity
Asian American Males	Disparity
Hispanic American Females	----
Hispanic American Males	----
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----) Too few contracts/available firms to determine statistical significance



3. Professional Services Prime Contractor Disparity Findings

Table 10.6 depicts the disparity findings for professional services contracts valued \$25,000 and under. Table 10.7 depicts the disparity findings for professional services contracts valued \$25,001 and less than \$1,030,000.

A disparity was found in the award of professional services prime contracts valued \$25,000 and under to African American, Asian American, and Hispanic American businesses and Caucasian females.

Table 10.6: Professional Services – \$25,000 and Under July 1, 2012, to June 30, 2017

Ethnicity	Professional Services
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Professional Services
African American Females	Disparity
African American Males	Disparity
Asian American Females	Underutilized
Asian American Males	Disparity
Hispanic American Females	----
Hispanic American Males	Disparity
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----) Too few contracts/available firms to determine statistical significance

A disparity was found in the award of professional services prime contracts valued \$25,001 and less than \$1,030,000 to African American, Asian American, and Hispanic American-owned businesses and Caucasian females.



**Table 10.7: Professional Services – \$25,001 and less than \$1,030,000,
July 1, 2012, to June 30, 2017**

Ethnicity	Professional Services
African Americans	Disparity
Asian Americans	Disparity
Ethnicity	Professional Services
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Professional Services
African American Females	Disparity
African American Males	Disparity
Asian American Females	Disparity
Asian American Males	Disparity
Hispanic American Females	----
Hispanic American Males	----
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----) Too few contracts/available firms to determine statistical significance

4. Goods and Services Prime Contractor Disparity Findings

Table 10.8 depicts the disparity findings for goods and services contracts valued from \$25,000 and under. Table 10.9 depicts the disparity findings for goods and services contracts valued \$25,001 and less than \$620,000.

A disparity was found in the award of goods and services prime contracts valued \$25,000 and under to African American, Asian American, and Hispanic American-owned businesses and Caucasian females.

Table 10.8: Goods and Services - \$25,000 and Under, July 1, 2012, to June 30, 2017

Ethnicity	Goods and Services
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity



Ethnicity and Gender	Goods and Services
African American Females	Disparity
African American Males	Disparity
Asian American Females	----
Asian American Males	Disparity
Hispanic American Females	Disparity
Ethnicity and Gender	Goods and Services
Hispanic American Males	Disparity
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----): Too few contracts/available firms to determine statistical significance

A disparity was found in the award of goods and services prime contracts valued \$25,001 and less than \$620,000 to African American, Asian American, and Hispanic American-owned businesses and Caucasian females.

**Table 10.9: Goods and Services – \$25,001 and Less than \$620,000,
July 1, 2010, to June 30, 2017**

Ethnicity	Goods and Services
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Goods and Services
African American Females	Disparity
African American Males	Disparity
Asian American Females	----
Asian American Males	Disparity
Ethnicity and Gender	Goods and Services
Hispanic American Females	Disparity
Hispanic American Males	Disparity
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(----): Too few contracts/available forms to determine statistical significance



B. Subcontractor Disparity Findings

As detailed in *Chapter 4: Subcontractor Utilization Analysis*, an extensive effort was undertaken to identify subcontracts awarded by the County's construction and professional services (including architecture and engineering services) prime contractors. Although the County had comprehensive MWBE subcontract records for the July 1, 2012, to June 30, 2017 study period, the non-MWBE subcontract records were not maintained. A collaborative effort between the County and Mason Tillman resulted in a reconstruction of non-MWBE subcontract records for the County's construction and professional services (including architecture and engineering) prime contracts.

1. Construction Subcontract Disparity Findings

A disparity was found in the award of construction subcontracts to African American, Asian American, and Hispanic American female-owned businesses. Caucasian females were underutilized.

Table 10.10: Construction - July 1, 2012, to June 30, 2017

Ethnicity	Construction
African Americans	Disparity
Asian Americans	Disparity
Hispanic Americans	not significant
Native Americans	----
Caucasian Females	Underutilized
Ethnicity and Gender	Construction
African American Females	Disparity
African American Males	Disparity
Asian American Females	Disparity
Asian American Males	Disparity
Hispanic American Females	Disparity
Hispanic American Males	**
Native American Females	----
Native American Males	**
Ethnicity and Gender	Construction
Caucasian Females	Underutilized

(**) Overutilization

(----) Too few contracts/available firms to determine statistical significance



2. Professional Services Subcontract Disparity Findings

A disparity was found in the award of professional services subcontracts to African American and Hispanic American-owned businesses and Caucasian females. Asian American females were underutilized.

Table 10.11: Construction - July 1, 2012, to June 30, 2017

Ethnicity	Professional Services
African Americans	Disparity
Asian Americans	Not significant
Hispanic Americans	Disparity
Native Americans	----
Caucasian Females	Disparity
Ethnicity and Gender	Professional Services
African American Females	Disparity
African American Males	Disparity
Asian American Females	Underutilized
Asian American Males	not significant
Ethnicity and Gender	Professional Services
Hispanic American Females	Underutilized
Hispanic American Males	Disparity
Native American Females	----
Native American Males	----
Caucasian Females	Disparity

(---): Too few contracts/available forms to determine statistical significance

IV. Race and Gender-Conscious Remedies

The proposed race and gender-conscious recommendations are predicated on the disparity findings and limited to the ethnic groups that were underutilized at a statistically significant. Since the gender-conscious recommendations proposed are subject to a lesser legal standard, they are predicated on a statistical finding of underutilization. The County's current MWBE Program should be amended to include the proposed race and gender conscious remedies for the procurement of both prime contracts and subcontracts. The remedies for prime contractor contracts should include bid discounts and evaluation points. And for subcontracts, the remedies should include construction and professional services subcontract goals.



A. Prime Contract Remedies

1. Bid Discounts on Construction Contracts

A five percent bid discount for evaluation purposes on construction prime contracts should be implemented. When applied, the bid discount would reduce the eligible bidder's price by five percent to determine the lowest responsive and responsible bidder. The maximum discount should not exceed \$50,000. The groups with statistically significant underutilization would be eligible for the bid discount as listed below in Table 10.12.

Table 10.12: Groups Eligible for Construction Bid Discounts

Ethnicity/Gender	Construction
African Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>

2. Goods and Services

A five percent bid discount for evaluation purposes on goods and services contracts should be implemented. When applied, the bid discount would reduce the eligible bidder's price by five percent to determine the lowest responsive and responsible bidder. The discount should not exceed \$50,000. The groups with statistically significant underutilization would be eligible for the bid discount as listed below in Table 10.13.

Table 10.13: Groups Eligible for Goods and Services Bid Discounts

Ethnicity/Gender	Goods and Services
African Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>



3. Evaluation Incentive Credits for Architecture and Engineering

The incentive credits should apply when the evaluation is qualifications based. Ten percent of the total evaluation credits available when scoring proposals and statements of qualifications should be allocated to the ethnic groups with a disparity and the underutilized woman-owned businesses. Incentive credits included in the evaluation criteria might counterbalance the competitive disadvantage experienced by the ethnic groups that were underutilized at a statistically significant level and the underutilized gender groups. The ethnic groups with statistically significant disparity and the underutilized woman-owned businesses that would be eligible for the evaluation points are listed in Table 10.14.

**Table 10.14: Groups Eligible for Architecture and Engineering Services
Evaluation Points**

Ethnicity/Gender	Architecture and Engineering Services
African Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>

Ten percent of the total evaluation credits available when scoring proposals and statements of qualifications for professional services should be allocated to the ethnic groups with a disparity and the underutilized woman-owned businesses. The ethnic groups with statistically significant disparity and the underutilized woman-owned businesses that would be eligible for the evaluation points for professional services are listed in Table 10.15.

**Table 10.15: Groups Eligible for Professional Services
Evaluation Points**

Ethnicity/Gender	Professional Services
African Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Asian Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>



B. Subcontractor Remedies

The County should implement construction and professional services (including architecture and engineering services) subcontract remedies for the ethnic groups that were found to have statistically significant disparity and the gender groups that were underutilized.

1. MWBE Subcontract Goals on Construction Contracts

An MBE and WBE subcontractor goal should be set on construction prime contracts. An MBE goal should be applicable to the ethnic groups that had a statistically significant disparity. A separate subcontract goal should be set on construction prime contracts for WBEs since Caucasian females were underutilized on the County's construction subcontracts. To meet the narrowly tailored standard, the MWBE construction subcontract goal should be based on the availability levels for each eligible ethnic or gender group presented in Table 10.16 below.

Table 10.16: MWBE Construction Subcontractor Availability

Ethnicity/Gender	Construction
African Americans	26.05%
Asian Americans	7.82%
Hispanic American Females	1.53%
Caucasian Females	19.62%

2. MWBE Subcontract Goals on Professional Services Contracts

An MBE and WBE subcontractor goals should be set on professional services (including architecture and engineering) prime contracts. An MBE goal should be applicable to the ethnic groups that had a statistically significant disparity. A separate subcontract goal should be set on professional services prime contracts for WBEs since Caucasian females had a statistically significant disparity in this industry. To meet the narrowly tailored standard, the MWBE professional services subcontract goal should not exceed the availability levels for each of the eligible ethnic and gender groups presented in Table 10.17 below.

Table 10.17: MWBE Professional Services Subcontractor Availability

Ethnicity/Gender	Professional Services
African Americans	26.69%
Asian Americans Females	2.00%



Ethnicity/Gender	Professional Services
Hispanic American	5.90%
Caucasian Females	21.51%

C. Procedures to Implement MWBE Remedies

An augmented MWBE program staff and specific programmatic procedures are needed to effectively implement the recommended prime and subcontractor race and gender-conscious remedies. Recommended procedures to ensure an effective implementation of an expanded MWBE program include verification of compliance at bid opening, review of subcontractor payment with each prime contractor invoice and monitoring subcontractor participation and substitution.

1. Augmented MWBE Program Staff

To effectively support an enhanced MWBE Program, adequate staffing is required. The staff should possess the requisite skills, knowledge, and abilities to implement and manage the complex requirements of a comprehensive MWBE Program. Below are descriptions of the Program's staffing roles:

Executive Staff:

- **Manager, MWBE Program (Existing):** provides direction and leadership in the development of programs and services which advance opportunities for growth of MWBEs. The MWBE Program Manager has authority to direct the office staff and ensure that user departments comply with Program requirements. The MWBE Program Manager should report to the Chief of Diversity and Inclusion. The Manager's responsibilities should also be extended to being a voting member of the evaluation panel for proposal and statements of qualifications.
- **Executive Assistant to the Manager, MWBE Program (New):** provides confidential assistance to the Manager with responsibility to perform secretarial and administrative support duties. The Executive Assistant must demonstrate proficiency in Microsoft Office Suite, the capacity to handle sensitive information with discretion, and the ability to work with a variety of individuals with diverse interests and backgrounds.

Technical Staff:

- **Contract Compliance Manager (New):** assists the Manager in managing the MWBE Program, oversees pre-award compliance with the MWBE Program requirements stipulated in the solicitation, and monitors post-contract compliance to ensure that the contract provisions are adhered to during the term of the contract. The Contract

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Compliance Manager must demonstrate proficiency in Microsoft Office Suite, knowledge of construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.

- **Certification Analysts (New):** advise applicants to whether their applications are complete and suitable for evaluation, review all certification-related documents, and perform site visits. Certification Analysts also participate in business outreach activities to increase certification applications. Certification Analysts must demonstrate proficiency in Microsoft Office Suite, business record auditing skills, knowledge of construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Contract Compliance Specialist (New):** monitors MWBE contract compliance and MWBE contractor and subcontractor project participation, investigates complaints, ensures contracts are properly and legally executed, and creates a profile of each contractor by preparing a site visit report. The Contract Compliance Specialist must demonstrate proficiency in Microsoft Office Suite, knowledge of construction and construction-related procurement processes, the ability to work with public officials and the general public, and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Data Analyst (New):** compiles, verifies, and reports data measuring the user department's compliance with the contract goals and monitoring requirements. The Data Analyst manages the data management system to ensure it is capable of generating the reports required to measure compliance with MWBE Program requirements. The Data Analyst must demonstrate proficiency in Microsoft Office Suite; knowledge of databases, design, data collection, and manipulation; and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Ombudsperson (New):** provides dispute resolution services and direct investigations of complaints from user departments, as well as prime contractors and subcontractors. The Ombudsperson must demonstrate proficiency in Microsoft Office Suite, knowledge of legal and mediation training methods and construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.

2. MWBE Advisory Committee

The County should establish a MWBE Advisory Committee (Committee) to support the administration of the of MWBE Program. The Committee should function as an advocate for MWBEs and other small businesses and be responsible for:



- Facilitating access to contracting opportunities for MWBEs and other small businesses
- Promoting and advancing MWBE participation as prime and subcontractors, and
- Identifying enhancements to the contract opportunity notification process

Ten members should be appointed by the County Council and the County Executive. The County Executive should designate and appoint a Chairman and the Committee should elect a Secretary for three-year terms. The membership and Committee guidelines should be published on the County's MWBE Program's webpage. Members should serve for staggered terms of three years. The Committee should monitor the effectiveness of the MWBE Program and make recommendations, as needed, to the County Executive and the MWBE Program Manager.

3. MWBE Certification Requirements

Certification is important to ensure that the businesses that participate in the race and gender-based remedies meet the County's eligibility requirements. Recertification of MWBE status should be required annually to verify the business's continued eligibility.

Currently the County does not certify businesses, instead, MWBE certifications is accepted from the Maryland Department of Transportation and Baltimore City. It is important to ensure that the MWBE certification process of all approved agencies meets minimum standards regarding the verification of the owner's ethnicity, gender, and control of the business operations. Thus, the County should only accept MWBE certification from an entity that performs both a desk audit and site visit. Before accepting another agency's MWBE certification, the County should reserve the right to audit the certification process for compliance with the minimum standards of review.

4. Goal Attainment at Bid Opening

The County's MWBE Program requires documentation of goal attainment at bid opening. To ensure the integrity of the goal attainment process, the prime contractor that fails to meet the contract goal must submit good faith effort documentation with the bid or proposal. If the good faith effort documentation is not submitted with the bid or the documentation is not approved, the submittal will be considered non-responsive. If no responses are found to be responsive, the solicitation should be cancelled and re-advertised.

5. Good Faith Effort Requirements

Good faith effort criteria are necessary for bidders that fail to meet the MWBE subcontracting goals. The County's MWBE Program includes good faith effort criteria. A bidder that fails to meet the MWBE subcontracting goal should be required to submit the required documentation with its bid or proposal to demonstrate the efforts to secure MWBE participation or the bid will be deemed non-responsive.

The County should enhance its good faith effort policy by mandating the requirement and assigning a value to each good faith effort element to further improve the attainment of its MWBE subcontracting goal. Good faith effort elements should be quantified to determine whether or not



a prime contractor has provided sufficient evidence of a good faith effort to meet the MWBE subcontract goals. The maximum score should be 100 points. To be considered a responsive bidder, the prime contractor must demonstrate a bona fide good faith effort that is sufficient to achieve a minimum score of 80% of the required points. The following are examples of good faith elements and recommended point assignments:

- Advertise (5 points)

Subcontracting opportunities for MWBEs should be advertised to certified MWBEs in three digital or print media outlets at least twice during the two weeks prior to the bid opening, except when advertisement in print media is required, unless the solicitation waives this requirement. Examples of the media outlets include general circulation media, minority-focused media, trade association publications, or trade-related publications. The advertisement should include the project name, the name of the bidder, areas of work available for subcontracting, contact person's name and telephone number, information on the availability of plans and specifications, date the subcontractor's written bid is due to the prime contractor, and assistance available to subcontractors in obtaining bonds, financing, and insurance.

- Outreach to Identify MWBEs (15 points)

Prime contractors should communicate with MWBEs through personal and frequent contact by promptly returning telephone calls and emails. Correspondence logs should list the names of the businesses, the representatives contacted, and dates of the contact. Copies of correspondence with the businesses contacted, including the responses received, should be provided. Documentation should also include facsimile transmittal confirmation slips or written confirmation of receipt by email with the date of transmission. At least three businesses should be contacted.

- Attend the Pre-bid Meeting (5 points)

Attendance at the scheduled pre-bid meetings should be mandatory to comply with the good faith effort requirement. The prime contractor's name on the pre-bid meeting sign-in sheet should serve as documentation.

- Provide Timely Written Notification (20 points)

Prime contractors should be required to solicit, in writing, subcontract bids and material quotes from relevant MWBEs at least two weeks prior to the bid opening. Relevant businesses are those that could feasibly provide the goods or services required to satisfy the terms specified in the County's solicitation. When soliciting bids, quotes, and proposals, the prime contractor should provide the project name, the bidder's name, subcontract items, primary contact person's name and phone number, information on the availability of plans and specifications, and the date on which the subcontractor's written bid should be submitted to the prime contractor. Written notification should include verification of the transmission date, the recipient's name, and the company name. Documentation should also include facsimile transmittal confirmation slips or written confirmation of receipt by email with the date of transmission.



- Contact Follow-up (15 points)

Prime contractors should be required to promptly return telephone calls, facsimiles, and emails after the initial solicitation. The follow-up should consist of a telephone call, facsimile, or email during normal business hours at least two weeks prior to the bid opening. The prime contractor should maintain correspondence logs that list the subcontractors who were contacted, including the results of that contact. The list should also include the names of the eligible businesses and contact persons, as well as telephone numbers, dates of contact, and notes regarding the outcome of said contact. The record should also identify the scope of work for which each was asked to provide a bid.

- Identify Items of Work (15 points)

Subcontracts should be broken down into discrete items or packages that MWBEs may find economically feasible to perform. The documentation should include a list with descriptions of the specific items of work solicited from eligible businesses, as well as notices and advertisements targeting MWBE subcontractors.

- Negotiate in Good Faith (15 points)

Prime contractors should negotiate fairly with interested MWBEs even if selection of the MWBE would nominally increase costs or the contractor could self-perform the work. Prime contractors may not unjustifiably reject bids, quotes, or proposals prepared by eligible businesses based on the subcontractor's standing within its industry, or on membership in a specific group, organization, association, and/or political or social affiliation. A written statement with names, addresses, and telephone numbers of subcontractors contacted and the negotiated price and services should be submitted. This list should include dates of the negotiations and the results and document the bids received from businesses that could provide a commercially useful function.

- Assist in Securing Financing, Insurance, or Competitive Supplier Pricing (10 points)

Prime contractors should provide MWBEs with technical assistance regarding plans, specifications, and requirements of the contract in a timely manner to facilitate responses to solicitations. Prime contractors may not deny a subcontract solely because a certified MWBE cannot obtain a bond and should make efforts to assist interested businesses in obtaining financing, bonds, and insurance required by the County, as well as provide competitive pricing. The prime contractor should provide a written description of the type of assistance offered, the company name, contact person and telephone number, and the name of the person who provided the assistance, as well as that of the supplier that offered competitive pricing.

6. Participation Counted Toward the MWBE Goal

Subcontractor participation counted toward the goal should be performed by the listed MWBE subcontractors unless the County approves a substitution during the term of the contract. Prime contractors should be required to submit a signed Letter of Intent to Subcontract form for every

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subcontractor used to meet the goal. Contractors that do not use the listed MWBE subcontractor and fail to secure an approved substitution should not receive reimbursement for self-performing or having another contractor perform all or part of the listed MWBEs work. The criteria for counting MWBE participation should also include a commercially useful function standard. A business that performs a commercially useful function minimally does the following:

- Executes a distinct element of the work of the contract.
- Carries out its obligation by actually performing, managing, or supervising the work involved and, in the case of a supplier, warehousing its materials, supplies, and equipment.
- Performs work that is normal business practice for its industry, service, and function.
- Completes the work identified at the time of bid opening and does not further subcontract a portion of the work that is greater than that expected to be subcontracted by normal industry standard.

7. Apply the MWBE Requirements to Grants

The County's *Purchasing Manual* provides that procurement funded by state and federal grants must meet the requirements set forth in the grant. The MWBE Program requirements should apply to grant funded procurement unless otherwise prohibited by the funding requirements.

8. Substitution of Listed MWBE Subcontractors

Substitution of a MWBE listed in a prime contract should be approved in writing by the project manager and the MWBE Program Manager. To substitute a MWBE there must be due process. Conditions where a substitution should be considered are where the subcontractor:

- Becomes insolvent
- Fails to execute a written contract for the scope of work and price specified in the subcontractor's bid after a reasonable amount of time has been granted
- Fails to perform the subcontract scope of work in accordance with industry standards
- Fails to meet the agreed upon bond requirements
- Fails to comply with the work completion schedule and disrupts the progress of the project

A written request for substitution should be submitted to the project manager and the MWBE Program Manager. The subcontractor should be copied on the request. The subcontractor should be afforded a hearing to present its written or oral statement of the facts. The County should hold the hearing within 48 hours of receiving the request for substitution. Prior to the hearing, the MWBE Program Manager should attempt to mediate the dispute. The decision reached by the project manager and the MWBE Program Manager should be final and binding. If the substitution is granted, the substituted MWBE should be replaced with another MWBE and approved by the MWBE Program Manager.



9. Tracking and Monitoring Standards

The approved MWBE subcontract goals should be monitored for compliance for the duration of the contract. The County's MWBE Program includes reporting provisions to measure the MWBE Program's effectiveness. The monitoring should be expanded to include reporting of all subcontractors, MWBEs and non-MWBEs. The monitoring should include a monthly verification of payments to MWBE subcontractors used to meet the goals. Any approved substitutions of listed subcontractors should be reported in the monthly report.

A quarterly MWBE Utilization report should also be produced documenting the MWBE goal attainment by department and overall, for the County. Contracts and prime contractors that did not achieve goal attainment at the close out, and the department that awarded each contract where the MWBE goal was not met, should be listed in the report.

10. MWBE Quarterly Utilization Review

The County should record MWBE participation on each prime contract at the time of award. Each prime contractor should be required to complete a listing all subcontractors, suppliers and truckers to be used on the contract. The prime contractor's invoice should list the cumulative payment to each contractor listed on the subcontractor utilization form. Any additional businesses added to the contract after the award must be listed on an amended subcontractor participation form. All substitutions and removal of a subcontractor should be approved and reported on the amended subcontractor participation form.

A quarterly utilization review should be conducted by the MWBE Program Manager in conjunction with each department to measure the effectiveness of the MWBE Program. Minimally, the report should analyze year-to-date prime and subcontract payments, original award, and modifications to the original award. Modification by contract change orders, amendments or substitutions should be separately reported by department. Contract-specific waivers to the subcontract goal at bid opening or failure to meet the subcontract goal during the term of the contract should also be published in the report. The report should be presented to the County Council at quarterly intervals and published on the County's website.

The fourth-quarter report should also assess year-to-date Policy activities. It should include the MWBE Advisory Committee's comments and descriptions of the County's exemplary practices and achievements.

11. Prompt Payment Provisions

The MWBE Program requires prime contractors to pay MWBEs for completed work immediately upon receipt of payment from the County. The payment should be made no later than five days after the payment is received from the County. The payment must be made before additional prime contractor invoice payments are issued. The County requires its prime contractors to certify in writing that payments to its subcontractors has been made. All prime contractor payments should



be posted on the County's website within 48 hours of issuance of payment, as a notice to both the prime contractor and the subcontractor that the payment was issued.

12. Formal Notice of Invoice Disputes

The County has informal means to resolve payment disputes, the resolution process should be formalized. Within five (5) days of receiving a disputed invoice, the County should provide the prime contractor with an Invoice Dispute Notification detailing items in dispute. Undisputed invoice amounts should be paid within fifteen (15) days and disputed items should be resolved in a timely manner and thereafter paid promptly.

The prime contractor should have the same obligation to give notice to the subcontractor within five (5) days of any disputed invoice or item of work on an invoice and the subcontractor should be paid for the undisputed items of work within five (5) days of receiving payment from the County. The prompt payment provisions should apply to the payment of disputed items on the subcontractor's invoice once the dispute is resolved.

13. Dispute Resolution Standards

Dispute resolution standards should be established to allow businesses to resolve issues relating to work performance after a contract award. A dispute resolution process should apply to disputes between prime contractors and the County as well as disputes between subcontractors and prime contractors. The dispute resolution process should include provisions for an ombudsperson. The ombudsperson could handle disputes, as needed, to achieve timely and cost-effective resolution. A dispute resolution meeting should be mandatory in the event a dispute cannot be resolved by the ombudsperson within ten (10) working days.

The first step in the dispute resolution process would be the submission of an oral or written complaint by the aggrieved party to the ombudsperson. The ombudsperson would then aid the parties in resolving the dispute by investigating the claim and making initial contact with the County, the prime contractor, or subcontractor. If the dispute is not resolved through these means within ten (10) working days, the ombudsperson will assist the aggrieved party in filing a request for a dispute resolution meeting.

The meeting would be the second step in the resolution process. Neither party may involve legal representation during this initial informal process in order to avoid significant legal costs for both parties. If the parties are not able to reach a mutually agreed upon resolution through a meeting, the dispute may proceed to formal mediation or arbitration. A dispute should be taken to mediation before it can proceed to arbitration.

Arbitration is the final step to resolving a dispute. The decision reached by the arbitrator is final and binding. The parties may retain legal representation during the mediation or arbitration process.



14. Penalties for Non-Compliance

The County should develop penalties for violation of the MWBE contract provisions by either the subcontractor or the prime contractor. Procedures for determining violations need to be established to specify procedures for reporting a violation, responsible party for adjudicating the reported violation, and the due process to investigate and render a final decision.

15. MWBE Program Manual

The County is in the process of updating its *MWBE Program Manual*. The *MWBE Program Manual* should standardize the application of the Program across the departments. The manual should describe the MWBE Program's updated mission, policy, and procedures and be available to all staff electronically. The requirements set forth in the manual should become standard operating procedure for each department. *The MWBE Program Manual* should also provide staff with clear guidance on their responsibilities to track and report the participation of MWBEs. The components of the Program which are integral to the procurement process should also be incorporated in the procurement training and the *Purchasing Manual*.

16. Systemwide MWBE Program Training

Training for all County staff should be conducted. Whenever the MWBE Program is updated a refresher training should be provided to all staff. The training module should be a module in the new employee orientation packet. The training should minimally include a:

- Seminar – to inform staff of any changes to the MWBE Program and procedures, and to promote the enhancements
- Employee training – to ensure that new employees understand the established policies and procedures. A printed copy of the *MWBE Program Manual* should be provided to each new County employee. The training should be conducted quarterly.
- Institutional barriers in the procurement process- to expand vendor outreach and resources for advertising solicitations and contract forecasts.

17. MWBE Program Training for Prime and Subcontractors Contractors

The County offers innovative educational programs for the business community to increase MWBE participation on both prime contracts and subcontracts. *How to Do Business with Baltimore County* are held annually. Topics range from pre-qualification requirements, MWBE certification standards, access to capital and surety bonding.

18. Enhance MWBE Program Outreach Strategies

Efforts to meet the MWBE subcontract goal could be enhanced with a comprehensive outreach campaign targeting certified MWBEs to communicate contracting opportunities, contracting procedures, and the race and gender-conscious goals and objectives of the MWBE Program.



Table 10.18 lists strategies and tactics that the County should employ to enhance its MWBE Program outreach.

Table 10.18: MWBE Program Outreach Strategies

Strategy	Tactics
Design tagline and produce banner display	<ul style="list-style-type: none"> • Develop tagline • Design banner with placement of existing logo and new tagline
Define design standards and a layout for a uniform appearance of procurement documents	<ul style="list-style-type: none"> • Revise all procurement materials to include the program logo and tagline in order to have a uniform appearance
Develop collateral print material for outreach campaign	<ul style="list-style-type: none"> • Produce digital brochure to reflect program changes • Develop articles and press kits
Launch outreach campaign	<ul style="list-style-type: none"> • Distribute press kits and press releases • Place public service announcements • Pitch campaign to broadcast media
Host semi-annual contractors' open house and other networking events	<ul style="list-style-type: none"> • Plan and coordinate open house events • Distribute invitations by mail, facsimile, email, and tweets • Include procurement department in outreach events • Publicize informal contract opportunities • Distribute contract forecasts and certification forms
Distribute forecasts to targeted businesses	<ul style="list-style-type: none"> • Post forecasts on the website • Distribute through facsimile, email, Facebook™, Twitter™, and text alerts
Partner with agencies and organizations to disseminate program information	<ul style="list-style-type: none"> • Continue current agency partnerships • Develop local business and trade associations group partnerships
Conduct an annual program impact and outcome evaluation	<ul style="list-style-type: none"> • Establish measurable outcomes • Conduct business satisfaction surveys • Examine bidding history by department

V. Race and Gender-Neutral Recommendations



The County is committed to promoting the financial growth and stability of local small businesses within its market area. Administrative recommendations are offered to expand the responsibility of the MWBE Program to more effectively address the barriers that market area MWBEs and other small businesses, reported in the anecdotal interviews, as having encountered while trying to do business with the County.

A. Pre-Award Recommendations

1. Implement an Owner-controlled Insurance Program

The County should implement an Owner Controlled Insurance Program (OCIP) to consolidate risk management costs and reduce the burden of the insurance premium for MWBEs and small business owners. Under an OCIP or “wrap-up” program, a single insurance program negotiated by the government provides coverage for the owner and the contractors and subcontractors awarded its contracts. An OCIP could be established in cooperation with other local governments for greater savings. The County, and any other participating government could negotiate lower premiums than the individual contractor and would therefore benefit from the savings since the insurance costs incurred by each contractor are otherwise passed to the client in the bid and professional fees. The OCIP could be used to allow coverages for multiple insured entities to be “wrapped up” into a single consolidated insurance program.

2. Expanded Solicitation Notification Criteria

The County’s formal solicitations are advertised by posting the notice on a public bulletin board, the County’s website and on eMaryland Marketplace. The Purchasing Agent may also advertise the notice in a newspaper or other media outlets. Print media is increasingly being replaced by digital media. Publishing bidding opportunities in newspapers and trade publications can be ineffective in reaching MWBEs. It has been established that searching for bidding opportunities in print media is time-consuming and tedious. Given the changes in communication styles to target outreach and maximize reach in a cost-effective way, the County should use as a standard method of communication email, Twitter™, and text alerts to reach more MWBEs and non-MWBEs.

3. Standardize the Release of Solicitations

Solicitations should be published on the same day or days each week. The regular release of solicitations will ease the burden for small businesses to track the County’s contract opportunities. Sufficient notice should be provided to allow the contractor adequate time to respond to the bid or proposal.

4. Listserv™ to Communicate with Certified Businesses

Listserv™, an email list management software, could target emails to certified MWBEs that have expressed an interest in the County’s upcoming contracts and contract forecasts. It is important to ensure the solicitations emailed to a business are relevant. Therefore, the solicitations should be mailed to the businesses based on the industry codes in their profile. A Listserv™ can disseminate low cost communications to MWBEs, ensuring that communications occur on a regular basis. The database can be easily updated to include newly certified MWBEs.



5. Re-evaluate Capital Construction Prequalification Requirements

To submit a bid for a Department of Public Work's capital construction contract, the prime contractor must be prequalified at least ten calendar days prior to bid opening, otherwise, the bid will not be accepted. The prequalification application must include:

- Documents identifying individuals who may legally bind the firm
- Summary of prior three years of relevant public and private work
- Description of firm's financial condition
- Staffing level
- Description of facilities and equipment
- Capacity and type of work qualified to perform at one time
- Type, model, year of manufacture, value, and condition of owned or permanently leased equipment and facilities related to the requested work
- Bonding company
- Other business names used

The contractor's prior work experience must be completed with 50% or more of the contractor's own forces. The prequalification certificate is valid for 36 months, unless otherwise specified in the Department of Public Works' Standard Specifications for Construction and Materials.

The pre-qualification process is managed by the Prequalification Committee (Committee). The prequalification can be conditional at the discretion of the Prequalification Committee. The factors include the Committee's evaluation of the contractor's past performance, responsiveness, financial condition, or any other criteria in the best interest of the County. Contractors can apply for an increase to either a qualified limit, qualification limit, or work classifications six months after the Committee's final decision on the contractor's previous application. The Committee is also responsible for classifications and determining the need for prime contractors on all projects built by or accepted by the County, including construction, reconstruction, or demolition of physical facilities, and capital improvement projects in excess of \$25,000. The Committee also determines the need for prime contractors on County right-of-way of projects. The Prequalification Committee is comprised of three staff persons from the Department of Public Works. The standing committee members include other department heads and may include staff from the MWBE Program.

The prime contractor disparity analysis documented statistically significant disparity for all ethnic groups at the informal and formal level on the County's construction contracts. To remedy the documented disparity, the County should eliminate or minimally re-evaluate the capital improvement construction prequalification requirements as a condition to submit a bid.

6. Re-evaluate Professional Engineering, Architecture, and Landscaping Architecture Prequalification Requirements

Consultants must be prequalified by the Professional Services Selection Committee (PSSC) to submit a proposal for professional engineering, architecture, and landscape architecture services.



The PSSC considers, but is not limited to, the following information when prequalifying applicants:

- Architects, landscape architects and engineers must be licensed by the State of Maryland
- Expertise of key consultant staff or associates
 - Tenure with the firm
 - Years active in discipline
 - Education relevant to the project
- Previous work experience relevant to the project
- Previous experience working with the County

To maintain prequalification status, consultants are required to submit a statement of prequalification and performance data annually. Once a firm is prequalified the PSSC determines if and when the prequalified business is eligible to receive a request for proposals. Not only does the PSSC determine the type and scope of projects that the prequalified firm is capable of performing, but the Committee also evaluates and ranks the proposals submitted by the prequalified firms it designates as worthy of receiving the solicitation.

The PSSC is comprised of six members, including 1) the Director of the Department of Public 2) the Chief of the Bureau of Engineering and Construction or the Chief of Design, 3) the Director of the Office of Budget and Finance or the Director's designee, and 4) three public members appointed by the County Executive.

The prime contractor disparity analysis documented statistically significant disparity for all ethnic groups on architecture and engineering contracts solicited using both the informal and formal procurement process. Additionally, business owners with architecture, landscape architecture, and engineering licenses with the State of Maryland expressed frustration at their inability to prequalify with the County during their anecdotal interviews. The prequalification process is a barrier to the participation of minority and woman-owned businesses on County design contracts. Therefore, the County should re-evaluate the pre-qualification requirements, the process and the award of task orders to prequalified businesses.

The subjective nature of the current process should be addressed. The prequalification committee should rotate its members annually and include the MWBE Program Manager. Additionally, there should be non-County members on the committee. Reciprocity should be granted to firms prequalified with other regional governments to ensure a more diverse pool of prequalified businesses. A written denial should be provided to each applicant that is not prequalified. Furthermore, to ensure there is equitable distribution of the assignments the task orders should be issued on a rotational basis.

7. Implement a Small Purchase Sheltered Market Program

A small purchases rotation program would allow small business to compete with similarly situated businesses for small contracts. Contracts awarded using the informal procurement method and



other small contracts issued as direct orders under large multi-year contracts could be included in the sheltered market program.

Small purchases, solicited without advertising, affords small businesses the opportunity to perform as prime contractors. A small purchases rotation component would limit competition to MWBEs and other similarly situated small businesses. Construction, professional services, and goods and services prime contracts that do not exceed \$25,000 should be awarded under the sheltered market. The awards would be made on a rotating basis. No business in the rotation would be eligible to receive a second assignment until all other businesses on the list had been offered at least one assignment.

B. Post-Award Procedures

1. Modify Change Order/Amendment Requirements

The County Council approval is not required for change orders or contract amendments if the amendment does not materially revise the contract terms including the scope of work or increase the compensation cap of the contract. The Director of the Office of Budget and Finance has the discretion to determine what constitutes a nonmaterial revision.

The following requirements should be met for authorization of change orders/amendments:

- The request should not exceed 15 percent of the original cost of the contract; if the cost exceeds 15 percent the contract, the new task or scope should be awarded through competitive solicitation.
- The change order should only be granted for the same scope or work described in the original contract.
- The history of previous change order requests to the contract should accompany all additional requests.

2. Pay Mobilization to Subcontractors

For subcontractors, project start-up costs can also be significant. A subcontractor that has limited resources and access to credit may find that start-up expenses inhibit its ability to bid County contracts. Under circumstances where mobilization payments are approved for the prime contractor, the subcontractor should be paid an amount equal to their participation percentage no later than five (5) business days before they are required to mobilize to perform the contracted work.

To ensure transparency, subcontractors should be notified when the prime contractor receives mobilization payments from the County. Notification should be provided through email and also published on the County's website with all other invoice payments. The prime contractor should be required to submit proof of mobilization payment to subcontractors when the subcontractor performs their initial item of work.



C. Data Management Enhancements

1. Modify the Financial Management System to Capture Complete Prime Contract Data

The prime contractor data analyzed in the Study was provided by the Office of Budget and Finance. Several datasets were extracted from the County's financial management system. Critical information missing from the prime contract dataset maintained by the Finance Division had to be reconstructed. At minimum, each record in the financial system should include the unique contract number, the contract name, project description, industry code, award amount and date, payment amounts and dates, vendor name, and certification status. This system should track contracting activity from award through completion, including the race and gender of all prime contractors. It also should track contract award and payment amounts throughout the life of the project, which includes all task orders, work orders, direct orders, change orders and amendments.

Given the necessity to track comprehensive MWBE and non-MWBE prime contractor and subcontractor data, Mason Tillman recommends that the County make the following modification to its financial management procedures:

- Modify the Prism subcontractor tracking system to track the participation of all MWBE and non-MWBE subcontractors, subconsultants, suppliers, and truckers for the duration of each contract. The electronic compliance reporting system should allow for submission of utilization reports online and online verification of payments made to subcontractors. The compliance reporting system portal should be fully integrated with the County's financial management database, to ensure that information submitted by a contractor is captured and verified.
 - The modification should include complete contact information for each subcontractor and prime contractor

The Prism subcontractor tracking system could support the recommended prompt payment policy and enhance the County's ability to monitor compliance with its MWBE Program. With modifications to the information recorded, the system could house complete and current information on the subcontract awards and payments. The information should be captured in real time to allow subcontractors to notify the County of late payments or non-payments. In addition, each subcontractor listed as 'paid' for the previous billing cycle should be contacted electronically to verify payment received. Instituting a verification procedure would eliminate reliance on self-reporting by prime contractors. If a subcontractor reports a discrepancy in the amount received from the prime contractor, the discrepancy should be resolved before any additional payments are made to the prime contractor.





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